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Massachusetts Law Quarterly

MARCH, 1950

**The Muniments of Title
of Massachusetts
To Her Submerged Sea Lands**

The Federal Challenge of Such Titles and the Impact of the Majority Opinion in United States v. California, 332 U.S. 19 on Such Titles and on the Historic Foundation of the Government of the United States.

The Relation of the Original Thirteen States to the Federal Government.

The Reasons Why Congress Should Pass the Bills Now Pending Before the Senate and the House to Counteract the Majority Opinion of the Court, to Confirm the Titles of the States and to Remove the Clouds Judicially Imposed Thereon.

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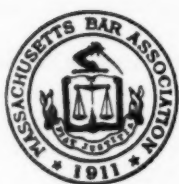
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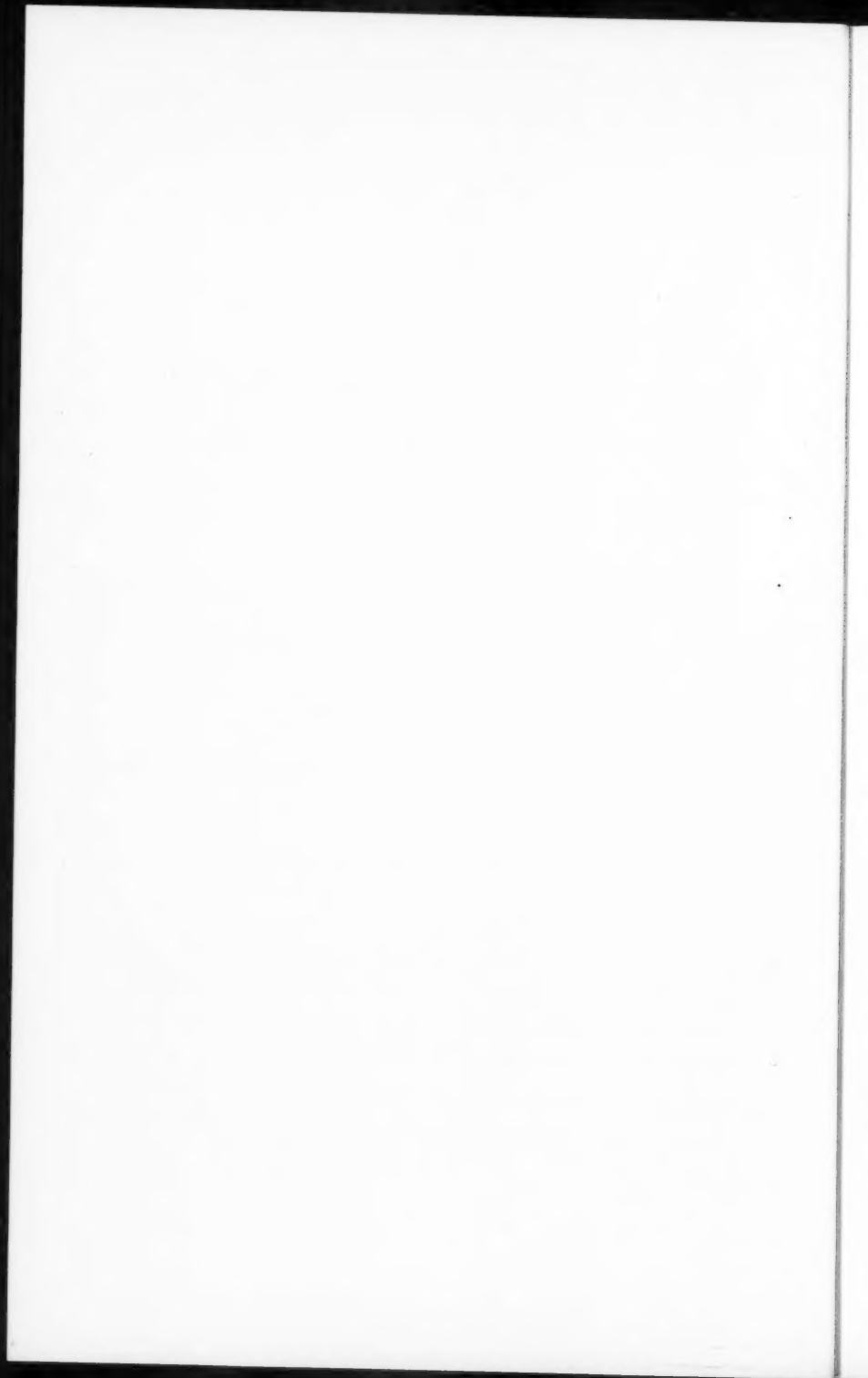
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The Reasons For This Special Issue

This discussion is of practical importance to all the people in Massachusetts in general and all landowners and lawyers who represent or may in future represent landowners, lessees and others interested in Massachusetts land. Some information about this matter and the bill pending before Congress was printed in the "Quarterly" for April 1948.

We believe the results of further study should be submitted now to the bench and bar of Massachusetts, to Massachusetts and other Congressmen and to judges and lawyers throughout the country for consideration. For this reason it is printed in a special issue of the "Quarterly".

*The Pending Bills Before Congress and The Pending
Cases Against Louisiana and Texas Based On The
Majority Opinion in U. S. v. California 332 U.S. 19 (1947)*

There are now pending before the United States Senate a bill and a companion bill before the House to counteract the opinion in the California case referred to and confirm the titles of the states and those holding under them in the submerged land on their borders. The resolution of the executive committee of the Massachusetts Bar Association in support of such legislation was sent to the President and to all members of Congress in April 1949 and printed in the Massachusetts Law Quarterly for April 1949. It was submitted to the Senate Committee of Interior and Insular Affairs at the hearings in October 1949 and is again reprinted in full in the report of those hearings at pp. 339-346. Similar legislation was urged by a memorial of the General Court of Massachusetts of March 18, 1948, partly reprinted in Appendix C. The following discussion supports those resolutions. They were submitted because of the statement of the majority in the California case (at p. 27) that Congress "could, of course, limit the power of the Attorney General" to prosecute claims for the Government.

Following the California opinion, similar proceedings were instituted by the Attorney General against Texas and Louisiana and are now pending before the Supreme Court for argument.

Massachusetts has not yet been sued, but the historic rights of the people of Massachusetts have been publicly challenged both by

the Attorney General and by a majority of the court. The profession, both bench and bar within and without Massachusetts, should be informed of what is going on not only in connection with pending legislation but in advance of possible and probable future proceedings against us.

The Case of United States v. California

The complaint in the California case alleged that the United States "is the owner in fee simple or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark . . . and outside of the inland waters of the state extending seaward three nautical miles"; that California "without authority from the United States," made leases with authority in the leases to take petroleum, gas and other mineral deposits, paying to California large sums in rents and royalties. The prayer was "for a decree declaring the rights of the United States in the area as against California and enjoining California and all persons claiming under it from continuing to trespass" . . . (pp. 22-23).

California did not raise any question as to the jurisdiction of the court of such a proceeding by the United States against a state without its consent; but filed an answer. The court states "the basis of California's asserted ownership is . . . that the original thirteen states acquired from the Crown of England title to all lands within their boundaries under navigable waters, including a three-mile belt in adjacent seas; and that since California was admitted as a state on an 'equal footing' with the original states . . . California at that time became vested with title to all such lands." (p. 23) The case was decided against California by a majority of six judges in an opinion by Mr. Justice Black, Justices Frankfurter and Reed dissenting and Mr. Justice Jackson not sitting.

The majority opinion said (at p. 31),

"From all the wealth of material supplied . . . we cannot say that the thirteen original colonies separately acquired ownership to the three mile belt or the soil under it, even if they did acquire elements of the sovereignty of the English crown by their revolution against it."

This material was not discussed in any particular or even described. California's case might, or might not, have been made out by a showing that Massachusetts and the original colonies owned the submerged lands along their shores, but, in any event, it was perfectly clear that the burden of proving that ownership did not rest upon California. The state was not the plaintiff and its lessees were in possession. The burden of showing title was squarely on the United States which was seeking to oust the lessees under a paramount title. This Scottish verdict,—“we cannot say”—was not even appropriate.

In *Toomer v. Witsell*, 334 U.S. 385, at p. 402, the court said, “While *United States v. California*, 332 U.S. 19 (1947) as indicated above does not preclude all state regulation of activity in the marginal sea the case does hold that neither the thirteen original colonies nor their successor states separately acquired ownership of the three mile belt.”

This over-statement when compared with that in the majority opinion quoted illustrates the “sliding” from a negative to a positive referred to by Mr. Justice Frankfurter in the California case. The position of the government and of the majority of the court toward the thirteen original states, of which Massachusetts was one cannot be supported. Why? Because the court did not discuss the muniments of title of the original thirteen states. We set forth herein the title deeds and constitutional muniments of Massachusetts titles which were not discussed by the majority of the court and we challenge any court of law to deny that title under the law and the constitution.

Extracts from Mr. Justice Reed's Dissent

“ . . . The ownership of that land carries with it, it seems to me, the ownership of any minerals or other valuables in the soil, as well as the right to extract them.

“The determination as to the ownership of the land in controversy turns for me on the fact as to ownership in the original thirteen states of similar lands prior to the formation of the Union. If the original states owned the bed of the sea, adjacent to their coasts, to the three-mile limit, then I think California has the same title or ownership to the lands adjacent to her coast. The original states were sovereignties in

their own right, possessed of so much of the land underneath the adjacent seas as was generally recognized to be under their jurisdiction.

"The authorities cited in the Court's opinion lead me to the conclusion that the original states owned the lands under the seas to the three-mile limit. . . .

"This ownership in California would not interfere in any way with the needs or rights of the United States in war or peace. The power of the United States is plenary over these undersea lands precisely as it is over every river, farm, mine, and factory of the nation. . . ."

Extracts from Mr. Justice Frankfurter's Dissent

"By this original bill the United States prayed for a decree enjoining all persons, including those asserting a claim derived from the State of California, from trespassing upon the disputed area. An injunction against trespassers normally presupposes property rights. The Court, however, grants the prayer but does not do so by finding that the United States has proprietary interests in the area. To be sure, it denies such proprietary rights in California. But even if we assume an absence of ownership or possessory interest on the part of California, that does not establish a proprietary interest in the United States. It is significant that the Court does not adopt the Government's elaborate argument, based on dubious and tenuous writings of publicists, see Schwarzenberger, *Inductive Approach to International Law*, 60 Harv. L. Rev. 539, 559, that this part of the open sea belongs, in a proprietary sense, to the United States. See *American Banana Co. v. United Fruit Co.*, 213 U.S. 347, 351. Instead, the Court finds trespass against the United States on the basis of what it calls the 'national dominion' by the United States over this area. . . .

"Of course the United States has 'paramount rights' in the sea belt of California—the rights that are implied by the power to regulate interstate and foreign commerce, the power of condemnation, the treaty-making power, the war power. We have not now before us the validity of the exercise of any of these paramount rights. Rights of ownership are here asserted—and rights of ownership are something else. Ownership implies acquisition in the various ways in which land is acquired—by

conquest, by discovery and claim, by cession, by prescription, by purchase, by condemnation. When and how did the United States acquire this land? . . .

"To declare that the Government has 'national dominion' is merely a way of saying that *vis-à-vis* all other nations the Government is the sovereign. If that is what the Court's decree means, it needs no pronouncement by this Court to confer or declare such sovereignty. If it means more than that, it implies that the Government has some proprietary interest. This has not been remotely established except by sliding from absence of ownership by California to ownership by the United States. . . .

"Considerations of judicial self-restraint would seem to me far more compelling where there are obviously at stake claims that involve so many far-reaching, complicated, historic interests, the proper adjustments of which are not readily resolved by the materials and methods to which this Court is confined. . . ."

The Pollard Case in 1845 and the Two Questions Involved

All of the states, except the original ones, rely on their admission to the Union on an "equal footing" with the earlier states. Massachusetts and other original states rely on their titles acquired by grants from the English Crown from the earliest days of settlement. Those titles have never been ceded to the United States and were repeatedly confirmed before the constitution was ratified and were expressly confirmed by the constitution.

In the California case (p. 30) the majority said that the claim of state ownership "follows from the rule originally announced in *Pollard's Lessee v. Hagan*, 3. How. 212".

The majority was mistaken in that statement as far as the original states are concerned. The Pollard case involved claims of Alabama which was not an original state. The court held that the "equal footing" clause carried with it the same rights as those of the earlier states, but did not refer to earlier decisions or earlier history as to the original state ownership obviously because, at that time, it was common knowledge that the old states owned the land from the beginning of their respective settlements and that the United States never acquired ownership of anything except by cession (or by some legal taking subsequent to the adoption of the constitution). We will demonstrate this so far as Massachusetts is

concerned. It is a question of conveyancing and on a question of title one must examine the deeds. The court has not done this.

The Massachusetts Charter of 1629

(See Appendix A)

This charter granted by Charles I is printed in full in the Appendix A hereto for the information of all who have never known, or have forgotten, its contents and do not have it at hand for ready reference. The scope of the conveyance is illustrated by its opening. It begins with the recital of the grant by James I to "the Councell established at Plymouth in County of Devon" of "all that Parte of America" between specified degrees of latitude "and in Length, of and within all the Breadth aforesaid, throughout the Maine Landes from sea to sea; together with all the Firme Landes, Soyles, Groundes, Havens, Portes, Rivers, Waters, Fishing, Mynes and Mynerals, as well as Royal Mynes of Gould and Silver, as other Mynes and Mineralls, precious Stones, Quarries and all and singular other Comodities, Jurisdicons, Royalties, Privileges, Franchises and Prehemynences, *both within the said Tract of Land upon the Mayne and also within the Islandes and seas adjoining.*"

It then recites the conveyance by the Council of Plymouth in the county of Devon to Sir Henry Roswell and others and "at the humble suite and peticon" of Roswell and his associates and "of others whom they have associated with them" makes an enlarged grant to an enlarged group of named individuals constantly repeating in the recited conveyances, the description and the habendum of "all landes and grounds soyles, Havens, Portes, Rivers, Waters, Mynes, Minerals, jurisdicons" etc. etc. with powers of government.

This was the charter, the original of which was brought over by Winthrop and his associates in 1630 as a condition of their emigration and is now in the Massachusetts State House. It is the first muniment of title.

The colonists claimed under it and lived under it until its revocation (of questioned legality) about fifty years later when Andros was sent over as royal governor and, by challenging all titles in Massachusetts and otherwise, made himself so obnoxious that he was arrested and incarcerated when the news of the abdication of James II reached Boston.

Then followed the negotiations for the new charter which centered mainly around the confirmation of titles.

The Province Charter of 1691

(See Appendix B)

The first, or conveyancing, part of this charter of William and Mary is also printed in the appendix B hereto. It recited in detail all the previous grants in the charter of 1629, created the "province of Massachusetts Bay in New England" and granted to "the inhabitants of our said province or territory of Massachusetts Bay and their successors" all of Massachusetts including Maine "and all lands, grounds, places, soils, woods, and woodgrounds, havens, ports, rivers, waters and other hereditaments and premises, whatsoever, lying within the said bounds and limits aforesaid, and every part and parcel thereof; and also all islands and islets lying within ten leagues directly opposite to the mainland within the said bounds and all mines and minerals as well as royal mines of gold and silver as other mines and minerals whatsoever in the said lands and premises, or any part thereof." The habendum of the same "with their and every of their appurtenances" was to "our said subjects the inhabitants of our said province of Massachusetts Bay—and their successors to their only proper use and behoof for evermore, to be holden of us, our heirs and successors, as of our manor of East Greenwich, in the county of Kent by fealty only in free and common socage, yielding and paying—the fifth part of all gold and silver ore, and precious stones—found gotten had and obtained in any of said lands and premises, or within any part thereof."

Then followed a detailed confirmation of all titles held or granted under the earlier government.

Then follow the frame and powers of government and the following proviso,

"Provided also, that it shall and may be lawful for the said governor and general assembly to make or pass any grant of lands lying within the bounds of the colonies formerly called the colonies of the Massachusetts Bay, and New Plymouth, and province of Main, in such manner as heretofore they might have done by virtue of any former charter or letters patent; which grants of lands within the bounds aforesaid we do hereby will and ordain to be and continue for ever of full force and effect,

without our further approbation or consent. And so as nevertheless, and it is our royal will and pleasure, that no grant or grants of any lands lying or extending from the river of Sagadahock to the gulf of St. Laurence and Canada rivers, and to the main sea northward and eastward, to be made or passed by the governor and general assembly of our said province, be of any force, validity or effect, until we, our heirs or successors, shall have signified our or their approbation of the same."

The admiralty jurisdiction is reserved to the Crown, and, to provide masts for the royal navy, "all trees of the diameter of twenty-four inches and upwards of twelve inches from the ground" were also reserved.

There is the title of Massachusetts *including the title of Maine*, as it was at the American Revolution and in 1783.

The Crown had merely the reserved rights and the ultimate rights as Lord of the manor of East Greenwich. All these rights were "relinquished".

In the "Definitive Treaty" of 1783 between the Crown and the several separate states, the Crown merely *relinquished* its "claims" in reversion or reservation, to all "propriety and territorial rights" to Massachusetts as a "free, sovereign and independent state", as follows:

The Treaty of 1783

"Article 1st

"His Britannic Majesty acknowledges the said United States, viz. New Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign and independent States; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the Government, *propriety and territorial* rights of the same, and every part thereof."

The easterly boundary of the property of the several thirteen specified Atlantic States to each of which the reversionary title was thus released, including Massachusetts, was described in Article II as follows:

"East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and

from its source directly north to the aforesaid Highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean; excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia."

The Supreme Court of the United States is just what its name suggests. It is Supreme, but it is only a court. It is not above the law. Any opinion of that or any other court to the contrary notwithstanding it always has been, still is, and ever will be the law (until we cease to live under a democratic form of government) that a title formally conveyed to a person or a state remains in that person and his heirs or in the state and its successors until it is conveyed out. The United States cannot deny the pre-charter and pre-revolutionary title of the Crown. That would be to deny all title and to defeat its own pretensions. Admitting that title, it cannot deny that the Crown passed it to its subjects the inhabitants of the province of Massachusetts Bay to hold for evermore as of the royal manor of East Greenwich except by an expropriation. The Commonwealth of Massachusetts succeeded to the title of the Province of Massachusetts Bay.

The Massachusetts Constitution of 1780 "Part the Second" provides,

"The Frame of Government

"The people, inhabiting the territory formerly called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free sovereign, and independent body politic, or state, by the name of THE COMMONWEALTH OF MASSACHUSETTS."

The Crown released to it the right of the lord of the manor of East Greenwich and such limited specified rights as were reserved in the Province Charter of 1691. The land belongs to us, not to the United States and what we have we keep so long as we keep our law. The United States is more powerful than the Commonwealth and it can, undoubtedly, take our land away from us if it

is prepared to deny the existence and the authority of the law. But it cannot do so by operation of that law.

*Other Historic American Facts or "Components"
of American Constitutional History*

Mr. Justice Douglas, in his speech at the Seattle meeting of the American Bar Association (printed in the Journal of the American Judicature Society for December 1948 (p. 106) said "it is the constitution that we have sworn to defend, not some predecessor's interpretation of it." In his Cardozo lecture before the Bar Association of the City of New York on April 12, 1949, on "*Stare Decisis*" (printed in "The Record" of that Association, Volume 4 No. 5 May 1949) he said at pp. 152-154),

" . . . A judge looking at a constitutional decision may have compulsions to revere past history and accept what was once written. But he remembers above all else that it is the Constitution which he swore to support and defend, not the gloss which his predecessors may have put on it.

" . . . So far as constitutional law is concerned *stare decisis* must give way before the dynamic components of history."

Preceding, by some years, the statements of Mr. Justice Douglas as to the duty of this court in regard to the constitution, Mr. Justice Jackson in his book "The Struggle for Judicial Supremacy" (written while he was Solicitor General) has a chapter under the title "The Court Retreats to the Constitution", in which he thus describes the trend of decisions in recent years.

Approaching the present problems from this point of view, we will discuss the original and continuing "dynamic components". We assert the territorial and governmental claims of Massachusetts and her people and of all the persons claiming under them, not merely on the opinion in *Pollard v. Hagan Lessees*, or any of the later cases following that opinion,—we go back and assert these claims on the expressed and continuous provisions of the early charters, of the Articles of Confederation, the Treaty of 1783 and of the Federal Constitution and opinions of the Supreme Court long before the *Pollard* case, recognizing these claims and removing them from the jurisdiction of that or any other Federal court in such proceedings as those before the court today.

The two great "components of history" at the foundation of what Benjamin Franklin described as our "Republic, if you can keep it", were

1. The need of a national government.
2. The "distrust" of government referred to by Demosthenes, in his second Phillipic, when he said,

"There is one common bulwark which the instinct of sensible men possesses within itself, a good and safe one for all, but invaluable for democracies against tyrants. And, what is that bulwark? It is mistrust. Guard that; hold fast to that. If you preserve it, no harm can touch you. What is your object?" I said "Freedom". (See translation in 1930 by M. A. Vince, M.A. with Greek and English Text, published by William Heinemann Ltd. and G. P. Putnam's Sons.)

The two "components" posed the question, not only for the "framers" of our constitution, but for the ratifying conventions representing "the people", of which, by far the largest and most representative, was the Massachusetts Convention of 364 members from all over the commonwealth which proposed the turning point in the movement for ratification. It is common, to exalt the "framers" out of all proportion above these conventions. It is natural, but it is mistaken history. The "framers" learned something from the ratifying conventions. The question for them all was that described by James Otis, who as Mr. Justice Holmes said helped to lay the foundation of our constitutional law. In his "Rights of the British Colonies" in 1764, Otis, said,

"The grand political problem in all ages has been to invent the best combination or distribution of the supreme powers."

The distrust of power is of prime importance in considering what the people of the original states did in establishing the constitution and particularly what they believed and whether they ever provided for, or contemplated, title of these lands in the Federal government. The people of that day had, and rightly, "those provident fears" which Edmund Burke said "were the mother of safety".

One of the best statements of the "distrust" of a central government at a distance, is that of the forgotten Berkshire farmers and their country parson—Thomas Allen.

The Berkshire Farmers

In Smith's history of Pittsfield chapters 18-20 (see also A.B.A. Journal, March 1936) appear the petitions of the Berkshire farmers led by Thomas Allen, the country parson with a power of statement, who fired the first shot at the battle of Bennington. The petition of May, 1776 to the Massachusetts Legislature recited the reasons for refusing to allow the Massachusetts courts to sit in that county until a Constitution was formed as a basis of legislation. The farmers of western Massachusetts feared a legislature sitting on the seaboard as they had feared government from a distance in London and later feared government from a distance by Congress. They said

"That from the purest and most disinterested principle and ardent love for their country, without selfish consideration, and in conformity with the advice of the wisest men in the Colony, they ordered and assisted in suspending the executive courts in this county in August, 1774.

"That when they came more maturely to reflect on the nature of the present contest and the spirit and obstinacy of administration (p. 351)—

"When they further considered that the revolution in England afforded the nation but a very imperfect redress of grievances,—the nation, being transported with extravagant joy in getting rid of one tyrant, forgot to provide against another—and how every man by nature has the seeds of tyranny deeply implanted within him, so that nothing short of Omnipotence can eradicate them;

"That when they considered that now is the only time we have reason ever to expect for securing our liberties and the liberties of future posterity upon a permanent foundation that no length of time can undermine,—though they were filled with pain and anxiety at so much as seeming to oppose public councils, yet, with all these considerations in our view, love of virtue, freedom, and posterity prevailed upon us a second time to suspend the courts of justice in this country.' . . .

"That the first step to be taken by a people in such a state for the enjoyment or restoration of civil government among them is the formation of a fundamental constitution as the basis and ground-work of legislation"

. . . "That, knowing the strong bias of human nature to tyranny and despotism, we have nothing else in view, but to provide for posterity against the wanton exercise of power, which cannot otherwise be done than by the formation of a fundamental constitution."

"Let it not be said by future posterity that—We made no provision against tyranny among ourselves." (pp. 352, 353).

In 1778, "the county having again by decisive majority refused to admit the courts", they again called for a convention to form a Bill of Rights and a Constitution and suggested that if it was not done they might apply to some other state for admission. The town of Concord and other towns having also demanded a convention, one was eventually held in 1779 and 1780 and the present Constitution of Massachusetts, with its Bill of Rights for "a government of laws and not of men" was adopted in 1780.

A Voice From Maine

After the constitution was submitted to the state conventions in 1787-8, Thomas B. Wait of Portland, the editor of the first newspaper published in Maine, wrote his views to George Thatcher, a delegate to the Continental Congress, as follows:

"He did not condemn the new system 'by the lump' but only in part. A Bill of Rights, he thought, would remedy most of the evils which he saw, or thought he saw. 'I consider the several States', he said, 'to stand in a similar relation to the Nation, and its Constitution—as do individuals to a State and its Constitution—the former have certain rights, as well as the latter that ought to be secured to them—otherwise . . . the whole will be "*melded down*" into one nation; and then, God have mercy on us—our liberties are lost—The vast Continent of America cannot be long subjected to a Democracy, if consolidated into one Government—you might as well attempt to rule Hell by Prayer.'

(See Harding "The Federal Constitution in Massachusetts" pp. 38-39).

These echoed voices from Berkshire County and from Maine are indicative of the state of mind of the people and colour the words used in the governing documents.

The Articles of Confederation

in 1781 provided,

"Article I.—The style of the Confederacy shall be, 'The United States of America.'

"Article II.—Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled."

In Article IX "The United States, in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise *between two or more states concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following.*"

Then follow specific directions for the selection of "commissioners or judges to constitute a court"—the embryo of the court—"the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the *parties concerned—Provided—that no state shall be deprived of territory for the benefit of the United States.*"

The Settlement of Titles Prior to the Constitution

A Paragraph from Fletcher v. Peck in 1810

In *Fletcher v. Peck*, 6 Cranch, 87, at p. 142, in 1810, Chief Justice Marshall said,

"The question, whether vacant lands within the United States became a joint property or belonged to the separate states, was a momentous question which at one time threatened to shake the American Confederacy to its foundation. This important and dangerous contest has been compromised and the compromise is not now to be disturbed."

In "The Critical Period of American History", in the chapter on "Germs of National Sovereignty", John Fiske tells the dramatic story of the controversy, which, under the lead of Maryland, resulted in the great compromise by which Virginia, New York, Connecticut and Massachusetts *ceded* to the United States, their conflicting claims to the Northwest territory and led to the great

Ordinance of 1787—the climax of the work of the Confederation.

It was the settlement of titles to which Marshall referred in the passage quoted above from *Fletcher v. Peck*. That settlement, as we shall see, presently, was expressly protected in the constitution. This settlement was referred to and the page reference to Marshall's statement cited in *Rhode Island v. Massachusetts*, 12 Peters at p. 729, where the clause in the Articles of Confederation that "no state shall be deprived of territory for the benefit of the United States" was quoted.

The Constitution

Turning now to the Constitution itself, the second paragraph of section 3 of Article IV protects the territory of the states as follows:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property *belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States or of any particular state.*"

In the teeth of this provision it certainly cannot be suggested that, by ratifying the Constitution, the people of Massachusetts were ceding to the United States the property they had received from the Crown during the previous 158 years since 1630.

The Massachusetts Story of Ratification

The contest in Massachusetts was a turning point in the history of the constitution. Ratification was hopeless when the convention met and was still hopeless after three or four weeks of able debate until the plan of suggested amendments to be submitted to the first Congress, which, in substance eventually became the Federal Bill of Rights, was suggested by John Hancock.

Massachusetts was the sixth state to ratify. Delaware, Pennsylvania, New Jersey, Georgia had ratified when the Massachusetts convention met on January 9, 1788 and Connecticut ratified on that day. There was, however, much uncertainty and uneasiness, not only as to the ultimate ratification by nine states, but, especially in Pennsylvania where it was still doubtful whether there might not be a counter-movement of some kind to upset the previous ratification. Virginia and New York had not yet acted. Washington and Madison, as shown by their correspondence, were

very much concerned and believed that the ultimate result in Massachusetts, one of the larger States, would have great influence. In order to grasp the story, it should be realized that the convention in Massachusetts contained 364 members, a much larger membership than that in any other state. The debate lasted five weeks from January 9 to February 16 (See Warren "The Making of the Constitution" 819-20; Harding "The Federal Constitution in Massachusetts".)

Why Did Massachusetts Insist on the Tenth Amendment?

Harding, in the volume referred to, says at p. 74,

" . . . it seems, from a careful consideration of the above material, that the prime element in the opposition was the distrust with which men brought up in the democratic atmosphere of the New England town-meeting viewed all delegated power; and their inordinate desire to maintain a constant and efficient check upon all persons to whom it was found necessary to intrust a portion of their authority."

The word "inordinate" seems unjustified. The New England view was simply that of the old proverb, too much neglected to-day, "eternal vigilance is the price of liberty." The same view was expressed in the debate by Amos Singletary, an old Worcester County countryman, in somewhat effervescent language—

"These lawyers, and men of learning, and moneyed men", said he, "talk so finely, and gloss over matters so smoothly, to make us, poor illiterate people, swallow down the pill, expect to get into Congress themselves; they expect to be the managers of this Constitution, and get all the power and all the money into their own hands, and then they will swallow up all us little folks, like the great leviathan, Mr. President; yes, just as the whale swallowed up Jonah. This is what I am afraid of." (Debates, 203)

Mr. Singletary was answered by Jonathan Smith, a farmer of Lanesborough, in Berkshire County (Debates 203-204; Elliot's Debates, Vol. II, pp. 101-104) as follows:

"Mr. President: I am a plain man and get my living by the plough. I am not used to speak in public but I beg leave to say a few words to my 'brother plough-joggers' in this house . . .

"Now, Mr. President," he then continued, "when I saw this Constitution, I found that it" was "just such a thing as

we wanted. I got a copy of it and read it over and over. I had been a member of the Convention to form our own State Constitution, and had learnt something of the checks and balances of power, and I found them all here. I did not go to any lawyer, to ask his opinion; we have no lawyer in our town, and we do well enough without. I formed my own opinion, and was pleased with this Constitution. My honorable old daddy there (pointing to Mr. Singletary) won't think that I expect to be a Congressman, and swallow up the liberties of the people. I never had any post, nor do I want one, and before I am done you will think that I don't deserve one. But I don't think the worse of the Constitution because lawyers, and men of learning, and moneyed men, are fond of it . . . let us suppose a case now: Suppose you had a farm of fifty acres, and your title was disputed, and there was a farm of five thousand acres joined to you, that belonged to a man of learning, and his title was involved in the same difficulty; would not you be glad to have him for your friend, rather than to stand alone in the dispute? Well, the case is the same; these lawyers, these moneyed men, these men of learning, are all embarked in the same cause with us, and we must all swim or sink together. (Debates, pp. 203-5.)

But was the "honorable old daddy", Singletary, entirely wrong in his apprehensions when we consider what is going on in the country today?

*John Hancock Initiating the Federal Bill of Rights
in the Convention of 1788*

The Convention met on January 9, 1788. On January 31, ratification being still hopeless for the reasons just indicated, Governor John Hancock, took his seat as President and submitted a resolution to ratify with the proposals for a Federal bill of rights introduced as follows:—

"And as it is the opinion of this Convention that certain amendments and alterations in the said constitution would remove the fears and quiet the apprehensions of many of the good people of this commonwealth *and more effectually guard against an undue administration of the federal government*; the

convention do therefore recommend that the following alterations and provisions be introduced into the said constitution:—

“First. That it be explicitly declared that all powers not expressly delegated to Congress, are reserved to the several states, to be by them exercised.”

Samuel Adams in the Federal Convention of 1788

Samuel Adams, without whose support as representative of popular thinking, ratification would not have taken place, responded to Hancock's proposals for a Federal bill of rights as follows:

“Your Excellency's first proposition is, ‘that it be explicitly declared, that all powers not expressly delegated to Congress, are reserved to the several states, to be by them exercised.’ This appears to my mind to be a summary of a bill of rights, which gentlemen are anxious to obtain; it removes a doubt which many have entertained respecting this matter, and gives assurance that if any law made by the Federal government shall be extended beyond the power granted by the proposed Constitution, and inconsistent with the Constitution of this State, it will be an error, and adjudged by the courts of law to be void. It is consonant with the second article in the present Confederation, that each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this Confederation expressly delegated to the United States in Congress assembled. I have long considered the watchfulness of the people over the conduct of their rulers, the strongest guard against the encroachments of power; and I hope the people of this country will always be thus watchful.” (Debates of the Convention, p. 233; Elliot's Debates, Vol. II, pp. 130-131.)

After two days more of debate on February 2 the proposals were referred to a committee of twenty-five which reported favorably on February 4 with slight changes. The passage above quoted from Hancock's draft being unchanged and on February 6 ratification as thus recommended was by a vote of 187 to 168—a majority of 19 votes (355 members voting).

The Tenth Amendment

It is needless to quote the Tenth Amendment to show how closely its wording corresponded to the first amendment suggested by Hancock and supported by Samuel Adams.

James Sullivan in 1801

The legal aspect of sovereignty and titles referred to by Samuel Adams was again stated by James Sullivan, in his "History of Land Titles in Massachusetts" published in 1801. Sullivan was a supreme court judge from 1776-1782, Attorney General 1790-1807, first president of the Massachusetts Historical Society, founded in 1791, Governor of Massachusetts 1807, and the leading supporter in Massachusetts of Thomas Jefferson. He said, (p. 60)

"The thirteen original States claimed and had a cession of sovereignty and independence, each in its several capacity, by the mother country. They remained sovereign separate powers until the present constitution was formed. That constitution formed a nation; but it was a creature of 1789. It had then no public property, nor did the people, whose authority gave it existence, make it the proprietor of any other lands, than such as had been ceded, under the old confederation, to the United Colonies."

The only property thus "ceded", was (as pointed out by Sullivan) "their remote territories" following an invitation to make such cessions from the Continental Congress.

"Massachusetts ceded all beyond a line, falling from the Lake Ontario to the State of Pennsylvania, which now forms the east line of what is called, in the general government, The Western Territory."

Massachusetts "ceded" nothing else (see Sullivan 57-60).

Sullivan's statement reflects the common understanding as well as the obvious meaning of Articles I and II of the Treaty of Peace.

The United States, with the approval of a majority of the Court, is, therefore, denying its own title to the whole Northwest Territory.

That title, as already shown, did not originate with the treaty of 1783 which, as a matter of conveyancing, was obviously a mere release of a remote reversionary claim, confirming the grants to the early colonies. Those colonies, as independent states before the

constitution, did not cede their ancient western titles to the United States, because the nation did not then exist except as a confederation. As Sullivan pointed out, they ceded their claims to all the states to be held collectively in common or jointly as Confederate States and following these cessions the Confederation began to govern by the Ordinance of 1787 while the constitutional convention was sitting in Philadelphia.

Further and more important still all this was specifically stated by the court in 1827.

In *Harcourt v. Gaillard* (12 Wheat. 524) Mr. Justice William Johnson for the court, all of whom were old enough to know, at first hand, early history of the government said on behalf of the court (at p. 526):

"There was no territory within the United States that was claimed in any other right than that of some one of the confederated states; therefore, there could be no acquisition of territory made by the United States distinct from or independent of some one of the States." . . . The United States never "acquired anything by way of cession from Great Britain by that treaty. [of 1783] It has been viewed only as a recognition of pre-existing rights and on that principle the soil and sovereignty within their acknowledged limits were as much theirs [the States] at the declaration of independence as at this hour" [1827].

This was confirmed in *Rhode Island v. Massachusetts* (12 Pet. 657 at p. 729) where Mr. Justice Baldwin, for the court, said, after citing *Harcourt v. Gaillard*, that

"the United States could not take any vacant land within the boundaries of a State . . . the boundaries of the United States were the external boundaries of the several states and that the United States did not acquire any territory by the Treaty of Peace in 1783." and (at p. 734)

"The title of a state is sovereignty, full and absolute dominion, the title of an individual such as the state makes it by its grant and law."

These opinions confirm in every detail the statement quoted herein from James Sullivan.

These men stated what they knew to be the facts of American understanding when the treaty was made and when the Constitu-

tion was ratified. Those facts cannot be changed by theorizing to-day.

So much for the historic facts or "components" of our history.

The Apparently Forgotten Constitutional Clause

"No state shall be deprived of territory for the benefit of the United States" said the Articles of Confederation.

"Nothing in this constitution shall be so construed as to prejudice any claims . . . of any particular state" says the Constitution.

What do those words mean? We have found no discussion, not even a reference to them in any opinion of the court in connection with the provisions of Article III relating to "judicial power" and "jurisdiction" except the obvious understanding of them, without reference, by men old enough to know at first hand what they meant in 1787 and 1788.

They must mean something and they seem to mean a limitation on the federal power including both the "jurisdiction" and the "judicial power" of the Federal Courts. We find it difficult to see how proceedings, such as that against California and those now before the court, are anything but forbidden proceedings "to prejudice claims—of any particular state". Those words seem a clear constitutional protection of "the compromise" referred to by Chief Justice Marshall, in *Fletcher v. Peck*, in 1810, which he said "is not now to be disturbed".

What else can they mean? They cannot be regarded as accidental, "under the rule stated by Chief Justice Taney in an early case, *Holmes v. Jennison*, 14 Pet. 540, 570-571 and ever since fully accepted, that 'in expounding the constitution of the United States every word must have its due force, and appropriate meaning'; for it is evident from the whole instrument, that *no word was unnecessarily used, or needlessly added*. The many discussions which have taken place upon the construction of the constitution, have proved the correctness of this proposition; and shown the high talent, the caution and the foresight of the illustrious men who framed it." (quoted in *Williams v. United States* 289 U.S. pp. 272-273.)

John Marshall in *Marbury v. Madison*, 1 Cranch at p. 174 also said

"It cannot be presumed that any clause in the constitution is intended to be without effect."

It seems hardly necessary to suggest that it is not within the function of the court to rewrite history and titles by inventing facts and by ignoring the recorded title of the government itself to such lands as it did acquire *by cession*. And yet the majority of the court appears to have done just that. Although from the beginning of the government the United States had never acquired any title to anything except by cession or eminent domain the majority of the court now asserts a new transcendental conception of "paramount dominion and power" regardless of title, acquired from nobody, in the same opinion in which the court says that "we cannot say" that the original states acquired proprietorship, because of federal "needs" of the 20th century regardless of what happened in the 18th and 19th centuries. We confess that we are puzzled.

What Kind of Proceedings are Those Against California, Texas and Louisiana and Possibly Other States in Future Including Massachusetts?

Although no reference to the statute appears in the "complaint" in the pending proceedings against Louisiana and Texas they appear to be primarily for a "declaratory judgment" under Section 274 D of the Judicial Code. Such procedure valuable as it is, in many cases contemplates discretion in the court as to issuing a "declaratory judgment" or "further relief" based upon such a judgment. See Borchard "Declaratory Judgments" 2nd Ed. (1941), Chapter V. How should the discretion be exercised?

The complaint against Louisiana, after alleging title in fee in the United States "or" paramount dominion alleges (paragraph VII) a *claim* of ownership by the State and that the "State" "will continue to claim for itself," "and will continue" to aid, abet and encourage others as *its lessees* to trespass" on what? On an alleged (but non-existent) "fee simple, or paramount right in and full dominion and power over the lands" etc. What kind of legal proceeding is this? What is "trespass" on an alternative *claim* of "paramount dominion" without title? Who are the "parties" to be affected? Have the lessees or grantees of the state who have relied for their titles on the established law of the Constitution since 1788 no rights as parties? Does the State of Louisiana represent them in this proceeding so that they may lose their rights by an adverse "declaratory judgment"? Is this a proceeding *in rem* or *in personam*?

Did Congress contemplate such an anomalous proceeding as this when it passed Section 274D in 1934? Or did Congress pass the act on the natural and general assumption that the titles and local sovereignty of the States had been settled when the government was created and that it would remain settled, and as Chief Justice Marshall said in 1810 "would not be disturbed"?

*"Paramount Dominion" or "Quasi" Title Without Proprietorship,
and the Fallacious Logic of Federal "Needs"*

To the late Professor Maitland has been attributed the remark that "quasi" was the only Latin word the English bar really loved. Why?

Not in any spirit of flippancy or disrespect but in all the seriousness, called for by the issues, we call attention to the witty remark of Maitland because it points to the path of least resistance sometimes evident in legal arguments and opinions—in other words, not thinking or stating something through.

The footnote to page 31 of the California opinion contains references to various writings including a note on "Conflicting State and Federal Claims of Title in Submerged Lands of the Continental Shelf" 56 Yale Law Review 356-370, (January 1947). This note appeared two months before the argument in the California case and comparison shows a close resemblance between the majority opinion and some of the tentative suggestions in that note which concludes with the sentence

"The court should allow Congress to dispose of the matter, undistracted by legalisms of title".

The words "legalism" and "legalistic", which also appears in the note, have been freely used in recent years as epithets applied to the thinking of lawyers. They seem to have a sort of transcendental negative appeal but they seem peculiarly inappropriate when applied to questions of title and of the jurisdiction and judicial power of courts. It is noticeable also that when article IV of the constitution is quoted, whether in opinions or articles, the last clause protecting the "claims of any particular state" are not quoted. Why not?

The practical meaning for the future seems indicated by note 44 on page 362 of 56 Yale Law Review already cited as follows:

"The Navy Department at one time sought to persuade Congress to appropriate the oil deposits without compensation as an exercise of its control over navigable waters through its commerce power, dominant over any qualified title of the states on the theory that the oil was necessary to the navy, which aided navigation (citing hearings before a senate committee in 1938, etc.)

"The tenuous relation of an easement for navigation and title in the oil deposits has apparently led the navy to abandon this thesis."

That was written two months before the California case was argued. Of course, the proposal will be made again *sometime* but as stated in the note referred to

"It would be as logical to say that to exercise its powers of National defense or of regulation of commerce, the Federal Government needed a proprietary interest in the whole country." and we submit that is the logical fate of the original states on the *reasoning of the majority in the California case* unless the court stops somewhere in the course of its logic of "need".

That we are not alone in making this suggestion appears in the report of the Special Committee of the American Bar Association in 1948 as follows:

"The new concept that the federal government has the 'paramount right' to take property without compensation because it may need that property in discharging its duty to defend the country and conduct its foreign relations can have no logical end except that the federal government may take over all property, public and private, in the United States when some public official such as the Secretary of National Defense, for example, may say that the government needs this property in carrying out these duties. Under this theory the federal government could nationalize all of the coal mines and coal deposits, all of the iron mines and mine ore deposits, all oil and gas fields and all other prospective oil and gas producing areas, and indeed all of the natural resources of the country, without paying the owners therefor, wholly in disregard to the Fifth Amendment."

(73 A.B.A. Reports at p. 440).

The resolutions based on that report were adopted by a large majority of the House of Delegates (see 34 A.B.A. Journal No. 4, April 1948 pp. 279-80).

Uranium or some other substance may be discovered on someone's backyard or farm in New England. If so will the federal government have a "quasi" title? Why not on the logic of "need"?

Judicial Self-Restraint

In the 51st number of "The Federalist" (pp. 398-399)

"If men were angels no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government, which is to be administered by men over men, the great difficulty lies in this; you must first enable the government to control the governed, and in the next place oblige it to control itself."

Judges are part of government and in that capacity are expected to exercise self-control. It is part of the public function of the American bar as officers of the Courts to remind them of this.

We have heard much in recent years from within and without the court of the need of such restraint as part of the wisdom and duty of the court. Our whole approach to this subject is based on the assumption, as stated in the American Bar Association Journal for August 1949 (p. 451) that,

"The public-spirited sense of the professional responsibility of the court itself is the most powerful, as it is the only, compelling force to which the court is subject in the performance of its constitutional duties."

That is as it should be and we assume that high sense of responsibility to include occasional changes of opinion and correction of possible mistakes, even on its own motion if necessary, as has been demonstrated in the past.

We are, of course, familiar with the philosophical remarks of Mr. Justice Holmes as to the legislative aspect of the development of law by judicial decision and with his much quoted statement that what is often referred to as "judicial legislation" is "interstitial" but there is nothing "interstitial" about the assumption of

jurisdiction of proceedings like the present in the teeth of the constitutional provisions and history which we have quoted. Very recently, at a legislative hearing in Massachusetts, one of the signers of this discussion was struck by the following statement not usually made. A speaker stated that "the constitution of the United States was recently *amended* by interpretation".

Opinions like that of the majority in the California case go far to justify such remarks.

Conclusion

In the memorandum sent to the President and the members of Congress in April 1949, already referred to, we stated our belief "with confidence, that the Constitution of the United States would never have been ratified by Massachusetts (which then included Maine) if *first*, it had contained any provision granting this novel federal power or 'dominion' announced by the majority of the court or any idea of title or 'propriatorship' as claimed by the Attorney General; or *second*, if the constitution had authorized the United States to sue a state without its consent and conferred on the Federal courts jurisdiction of such a suit."

We believe that we have demonstrated the correctness of that belief.

We submit that, when the majority said, in the California opinion that "we cannot say that the thirteen original colonies separately acquired ownership" and then by "sliding" from the negative to the positive as Justice Frankfurter suggested, said flatly in *Toomer v. Witsell* that they did not, the court clouded the state titles and the titles of the United States to the northwest territory by undertaking to pass on a question of title without examining the muniments of title herein set out.

We respectfully submit that the majority of the court was mistaken in its history, its law and its vision in the California opinion and that the public interest of the people of the United States calls for the overruling of that opinion and for the passage of the bills now before the Senate and the House to withdraw the authority of the Attorney General of the United States to institute any further proceedings of such a character, to confirm the titles in the states

and to remove the cloud which has been judicially placed on the titles throughout the country but which the court itself has said may be removed by Congress.

Richard Wait, *President*

Frank W. Grinnell, *Secretary*

William B. Sleigh, Jr., *Asst. Secretary*
of the Massachusetts Bar Association

Nathan B. Bidwell

Appendix A

THE CHARTER OF MASSACHUSETTS BAY — 1629

Charles, by the grace of God, Kinge of England, Scotland, Fraunce, and Ireland, Defendor of the Fayth, &c. To all to whome theis Presents shall come Greeting. Whereas, our most Deare and Royall Father, Kinge James, of blessed Memory, by his Highnes Letters-patents bearing Date at Westminster the third Day of November, in the eighteenth Yeare of his Raigne, hath given and graunted vnto the Councell established at Plymouth, in the County of Devon, for the planting, ruling, ordering, and governing of Newe England in America, and to their Successors and Assignes for ever, all that Parte of America, lyeing and being in Bredth, from Forty Degrees of Northerly Latitude from the Equinoctiall Lyne, to forty eight Degrees of the saide Northerly Latitude inclusively, and in Length, of and within all the Breadth aforesaid, throughout the Maine Landes from Sea to Sea; together also with all the Firme Landes, Soyles, Groundes, Havens, Portes, Rivers, Waters, Fishing, Mynes, and Myneralls, aswell Royall Mynes of Gould and Silver, as other Mynes and Mineralls, precious Stones, Quarries, and all and singular other Comodities, Jurisdiccons, Royalties, Privileges, Franchesies, and Prehemynences, both within the said Tract of Land vpon the Mayne and also within the Islandes and Seas adioining: Provided alwayes, That the saide Islandes, or any of

the Premises by the said Letters-patents intended and meant to be graunted, were not then actuallie possessed or inhabited, by any other Christian Prince or State, nor within the Boundes, Lymitts, or Territories of the Southerne Colony, then before graunted by our saide Deare Father, to be planted by divers of his loveing Subjects in the South Partes. To have and to houlde, posses, and enioy all and singular the aforesaid Continent, Landes, Territories, Islandes, Hereditaments, and Precincts, Seas, Waters, Fishings, with all, and all Manner their Commodities, Royalties, Liberties, Prehemynences, and Proffits that should from thenceforth arise from thence, with all and singuler their Appurtenances, and every Parte and Parcell thereof, vnto the saide Councell and their Successors and Assignes for ever, to the sole and proper Vse, Benefitt, and Behoofo of them the saide Councell, and their Successors and Assignes for ever: To be houlden of our saide most Deare and Royall Father, his Heires and Successors, as of his Mannor of East Greene-wich in the County of Kent, in free and comon Soccage, and not in Capite nor by Knight's Service: Yeildinge and paying therefore to the saide late Kinge, his Heires and Successors, the fite Parte of the Oare of Gould and Silver, which should from tyme to tyme, and at all Tymes then after happen to be found, gotten, had, and obteyned in, att, or within any of the saide Landes, Lymitts, Territories, and Precincts, or in or within any Parte or Parcell thereof, for or in Respect of all and all Manner of Duties, Demaunds, and Services whatsoever, to be don, made, or paide to our saide Dear Father the late Kinge his Heires and Successors, as in and by the saide Letters-patents (amongst sundrie other Clauses, Powers, Privileges, and Grauntes therein conteyned, more at large appear-eth): And whereas, the saide Councell established at Plymouth, in the County of Devon, for the plantinge, ruling, ordering, and governing of Newe England in America, have by their Deede, indented vnder their Comon Seale, bearing Date the nyneteenth Day of March last past, in the third Yeare of our Raigne, given, graunted, bargained, sould, enfeofed, aliened, and confirmed to Sir Henry Rosewell, Sir John Young, Knights, Thomas Southcott, John Humphrey, John Endecott, and Symon Whetcome, their Heires and Assignes, and their Associats for ever, all that Parte of Newe England in America

aforesaid, which lyes and extendes betweene a greate River there Comonlie called Monomack alias Merriemack, and a certen other River there, called Charles River, being in the Bottome of a certayne Bay there, comonlie called Massachusetts, alias Mattachusetts, alias Massatusetts Bay, and also all and singuler those Landes and Hereditaments whatsoever, lyeing within the Space of three English Myles on the South Parte of the said Charles River, or of any, or everie Parte thereof; and also, all and singuler the Landes and Hereditaments whatsoever, lyeing and being within the Space of three English Myles to the Southwarde of the Southermost Parte of the saide Bay called Massachusetts, alias Mattachusetts, alias Massatusetts Bay; and also, all those Landes and Hereditaments whatsoever, which lye, and be within the space of three English Myles to the Northward of the said River called Monomack, alias Merry-mack, or to the Northward of any and every Parte thereof, and all Landes and Hereditaments whatsoever, lyeing within the Lymitts aforesaide, North and South in Latitude and bredth, and in Length and Longitude, of and within all the Bredth aforesaide, throughout the Mayne Landes there, from the Atlantick and Westernne Sea and Ocean on the Easte Parte, to the South Sea on the West Parte; and all Landes, and Groundes, Place and Places, Soyles, Woodes and Wood Groundes, Havens, Portes, Rivers, Waters, Fishings, and Hereditaments whatsoever, lyeing within the said Boundes and Lymytts, and everie Parte and Parcell thereof; and also, all Islandes lyeing in America aforesaide, in the saide Seas or either of them on the Westernne or Eastern Coastes or Partes of the said Tractes of Lande, by the saide Indenture mencoed to be given, graunted, bargained, sould, enfeoffed, aliened, and confirmed, or any of them; and also, all Mynes and Myneralls, as well Royall Mynes of Gould and Silver, as other Mynes and Mynerralls whatsoever, in the saide Lands and Premisses, or any Parte thereof; and all Jurisdiccons, Rights, Royalties, Liberties, Freedomes, Ymmunities, Privileges, Franchises, Preheminences, and Comodities whatsoever, which they, the said Councell established at Plymouth, in the County of Devon, for the planting, ruling, ordering, and governing of Newe England in America, then had, or might vse, exercise, or enjoy, in or within the saide Landes and Premisses by the saide Indenture mencoed

to be given, graunted, bargained, sould, enfeoffed, and confirmed, or in, or within any Parte or Parcell thereof: To have and to hould, the saide Parte of Newe England in America, which lyes and extendes and is abutted as aforesaide, and every Parte and Parcell thereof; and all the saide Islandes, Rivers, Portes, Havens, Waters, Fishings, Mynes, and Myneralls, Jurisdiccons, Franchises, Royalties, Liberties, Privileges, Comodities, Hereditaments, and Premisses whatsoever, with the Appurtenances vnto the saide Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcome, their Heires and Assignes, and their Associatts, to the onlie proper and absolute vse and Behoofe of the said Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whettcombe, their Heires and Assignes, and their Associatts forevermore; To be houlden of Vs, our Heires and Successors, as of our Mannor of Eastgreenwich, in the County of Kent, in free and comon Soccage, and not in Capite, nor by Knightes Service; Yeilding and payeing therefore vnto Vs, our Heires and Successors, the fifte Parte of the Oare of Goulde and Silver, which shall from Tyme to Tyme, and at all Tymes hereafter, happen to be founde, gotten, had, and obteyned in any of the saide Landes, within the saide Lymitts, or in or within any Parte thereof, for, and in Satisfaccon of all manner Duties, Demaundes, and Services whatsoever to be donn, made, or paid to Vs, our Heires or Successors, as in and by the said recited Indenture more at large maie appeare. Nowe Knowe Yee, that Wee, at the humble Suite and Peticon of the saide Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, and of others whome they have associated vnto them, Have, for divers good Causes and consideracons, vs moveing, graunted, and confirmed, and by theis Presents of our especiall Grace, certen Knowledge, and meere Mocon, doe graunt and confirm vnto the saide Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, and to their Associatts hereafter named; (videlicet) Sir Richard Saltonstall, Knight, Isaack Johnson, Samuel Aldersey, John Ven, Mathew Cradock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniell Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe,

Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcroft, their Heires and Assignes, all the saide Parte of Newe England in America, lyeing and extending betweene the Boundes and Lymytts in the said recited Indenture expressed, and all Landes and Groundes, Place and Places, Soyles, Woods and Wood Groundes, Havens, Portes, Rivers, Waters, Mynes, Mineralls, Jurisdiccons, Rightes, Royalties, Liberties, Freedomes, Immunities, Priviledges, Franchises, Preheminences, Hereditaments, and Comodities whatsoever, to them the saide Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, their Heires and Assignes, and to their Associatts, by the saide recited Indenture, given, graunted, bargayned, solde, enfeofed, aliened, and confirmed, or mencoed, or intended thereby to be given, graunted, bargayned, sold, enfeofed, aliened, and confirmed: To have, and to hould, the said Parte of Newe England in America, and other the Premisses hereby mencoed to be graunted and confirmed, and every Parte and Parcell thereof with the Appurtenances, to the saide Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaack Johnson, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuel Browne, Thomas Hutchins, Samuel Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Nowell, William Vassall, William Pinchion, and George Foxcroft, their Heires and Assignes forever, to their onlie proper and absolute Vse and Behoofe for evermore; To be holden of Vs, our Heires and Successors, as of our Mannor of Eastgreenewich aforesaid, in free and comon Socage, and not in Capite, nor by Knights Service; And also yielding and paying therefore to Vs, our Heires and Successors, the fifte parte onlie of all Oare of Gould and Silver, which from tyme to tyme, and at all tymes hereafter shalbe there gotten, had, or obteyned, for all Services, Exacons and Demaundes whatsoever, according to the Tenure and Reservacon in the said recited Indenture expressed. And further, knowe yee, that of our more especiall Grace, certen Knowledg, and meere mocon, Wee have given and graunted, and by theis Presents,

doe for Vs, our Heires and Successors, give and graunte vnto the saide Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Symon Whetcombe, Isaack Johnson, Samuells Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniel Wright, Samuells Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuells Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, their Heires and Assignes, all that Parte of Newe England in America, which lyes and extendes betweene a great River there, comonlie called Monomack River, alias Merrimack River, and a certain other River there, called Charles River, being in the Bottome of a certain Bay there, comonlie called Massachusetts, alias Mattachusetts, alias Massatusetts Bay; and also all and singular those Landes and Hereditaments whatsoever lying within the Space of Three Englishe Myles on the South Parte of the said River, called Charles River, or of any or every Parte thereof; and also all and singular the Landes and Hereditaments whatsoever, lying and being within the Space of Three Englishe Miles to the southward of the southermost Parte of the said Baye, called Massachusetts, alias Mattachusetts, alias Massatusetts Bay: And also all those Landes and Hereditaments whatsoever, which lye and be within the Space of Three English Myles to the Northward of the saide River, called Monomack, alias Merrymack, or to the Norward of any and every Parte thereof, and all Landes and Hereditaments whatsoever, lying within the Lymitts aforesaide, North and South, in Latitude and Bredth, and in Length and Longitude, of and within all the Bredth aforesaide, throughout the mayne Landes there, from the Atlantick and Western Sea and Ocean on the East Parte, to the South Sea on the West Parte; and all Landes and Groundes, Place and Places, Soyles, Woodes, and Wood Groundes, Havens, Portes, Rivers, Waters, and Hereditaments whatsoever, lying within the said Boundes and Lymytts, and every Parte and Parcell thereof; and also all Islandes in America aforesaide, in the saide Seas, or either of them, on the Western or Eastern Coastes, or Partes of the saide Tracts of Landes hereby mencoed to be given and graunted, or any of them; and all Mynes and Mynerals whatsoever, in the said

Landes and Premisses, or any parte thereof, and free Libertie of fishing in or within any of the Rivers or Waters within the Boundes and Lymytts aforesaid, and the Seas therevnto adjoining; and all Fishes, Royal Fishes, Whales, Balan, Sturgions, and other Fishes of what Kinde or Nature soever, that shall at any time hereafter be taken in or within the saide Seas or Waters, or any of them, by the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaack Johnson, Samuell Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Noell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, their Heires and Assignes, or by any other person or persons whatsoever there inhabiting, by them, or any of them, to be appointed to fishe therein. Provided alwayes, That yf the said Landes, Islandes, or any other the Premisses herein before mencoed, and by theis presents, intended and meant to be graunted, were at the tyme of the graunting of the saide former Letters patents, dated the Third Day of November, in the Eigtheenth Yeare of our said deare Fathers Raigne aforesaide, actuallie possessed or inhabited by any other Christian Prince or State, or were within the Boundes, Lymytts or Territories of that Southerne Colony, then before graunted by our said late Father, to be planted by divers of his loveing Subiects in the south partes of America, That then this present Graunt shall not extend to any such partes or parcells thereof, soe formerly inhabited, or lyeing within the Boundes of the Southerne Plantacon as aforesaide, but as to those partes or parcells soe possessed or inhabited by such Christian Prince or State, or being within the Bounders, aforesaide shal be vtterlie voyd, theis presents or any Thing therein conteyned to the contrarie notwithstanding. To have and hould, possesse and enjoy the saide partes of New England in America, which lye, extend, and are abutted as aforesaide, and every parte and parcell thereof; and all the Islandes, Rivers, Portes, Havens, Waters, Fishings, Fishes, Mynes, Myneralls, Jurisdiccons, Franchises, Royalties, Liberties, Priviledges, Comodities, and Premisses whatsoever, with the Appurtenances, vnto the said

Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaack Johnson, Samuell Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcroft, their Heires and Assignes forever, to the onlie proper and absolute Vse and Behoufe of the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaac Johnson, Samuell Aldersey, John Ven, Mathewe Cradocke, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcroft, their Heires and Assignes forevermore: To be holden of Vs, our Heires and Successors, as of our Manor of Eastgreenwich in our Countie of Kent, within our Realme of England, in free and comon Soccage, and not in Capite, nor by Knights Service; and also yeilding and paying therefore, to Vs, our Heires and Successors, the fite Parte onlie of all Oare of Gould and Silver, which from tyme to tyme, and at all tymes hereafter, shal be there gotten, had, or obteyned, for all Services, Exacons, and Demaundes whatsoever; Provided alwaies, and our express Will and Meaninge is, that onlie one fite Parte of the Gould and Silver Oare above mencoed, in the whole, and noe more be reserved or payeable vnto Vs, our Heires and Successors, by Collour or Vertue of theis Presents, the double Reservacons or recitalls aforesaid or any Thing herein conteyned notwithstanding. And forasmuch, as the good and prosperous Successe of the Plantacon of the saide Partes of Newe-England aforesaide intended by the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaack Johnson, Samuell Aldersey, John Ven, Mathew Cradock, George Harwood, Increase Noell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John

Browne, Samuëll Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, to be speedily sett vpon, cannot but chiefly depend, next vnder the blessing of Almighty God, and the support of our Royall Authoritie vpon the good Government of the same, To the Ende that the Affaires and Buysinneses which from tyme to tyme shall happen and arise concerning the saide Landes, and the Plantation of the same maie be the better managed and ordered, Wee have further hereby of our especial Grace, certen Knowledge and mere Mocon, Given, graunted and confirmed, and for Vs, our Heires and Successors, doe give, graunt, and confirme vnto our said trustie and welbeloved subiets Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endicott, Simon Whetcombe, Isaack Johnson, Samuëll Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuëll Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuëll Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte: And for Vs, our Heires and Successors, Wee will and ordeyne, That the saide Sir Herny Rosewell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endicott, Symon Whetcombe, Isaack Johnson, Samuëll Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Noell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuëll Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuëll Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, and all such others as shall hereafter be admitted and made free of the Company and Society hereafter mencoed, shall from tyme to time, and att all tymes forever hereafter be, by Vertue of theis presents, one Body corporate and politique in Fact and Name, by the Name of the Governor and Company of the Mattachusetts Bay in Newe-England, and them by the Name of the Governour and Company of the Mattachusetts Bay in Newe-England, one Bodie politique and corporate, in Deede, Fact, and Name; Wee doe for vs, our Heires and Successors, make, ordeyne, constitute, and confirme by theis Presents, and that by that name they shall have perpetuall Succession, and that by the

same Name they and their Successors shall and maie be capeable and enabled aswell to implead, and to be impleaded, and to prosecute, demaund, and aunswere, and be answered vnto, in all and singuler Suites, Causes, Quarrells, and Accons, of what kinde or nature soever. And also to have, take, possesse, acquire, and purchase any Landes, Tenements, or Hereditaments, or any Goodes or Chattels, and the same to lease, graunte, demise, alien, bargain, sell, and dispose of, as other our liege People of this our Realme of England, or any other corporacon or Body politique of the same may lawfully doe. And further, That the said Goverour and Companye, and their Successors, maie have forever one comon Seale, to be vsed in all Causes and Occasions of the said Company, and the same Seale may alter, chaunge, breake, and newe make, from tyme to tyme, at their pleasures. And our Will and Pleasure is, and Wee doe hereby for Vs, our Heires and Successors, ordeyne and graunte, That from henceforth for ever, there shalbe one Governor, one Deputy Governor, and eightene Assistants of the same Company, to be from tyme to tyme constituted, elected and chosen out of the Freemen of the saide Company, for the tyme being, in such Manner and Forme as hereafter in theis Presents is expressed, which said Officers shall applie themselves to take Care for the best disposing and ordering of the generall buysines and Affaires of, for, and concerning the said Landes and Premisses hereby mencoed, to be graunted, and the Plantacion thereof, and the Government of the People there. And for the better Execucon of our Royall Pleasure and Graunte in this Behalf, Wee doe, by theis presents, for Vs, our Heires and Successors, nominate, ordenye, make, & constitute, our welbeloved the saide Mathewe Cradocke, to be the first and present Governor of the said Company, and the saide Thomas Goffe, to be Deputy Governor of the saide Company, and the saide Sir Richard Saltonstall, Isaack Johnson, Samuell Aldersey, John Ven, John Humfrey, John Endecott, Simon Whetcombe, Increase Noell, Richard Pery, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Adams, Thomas Hutchins, John Browne, George Foxcrofte, William Vassall, and William Pinchion, to be the present Assistants of the saide Company, to continue in the saide several Offices respectivelie for such

tyme, and in such manner, as in and by theis Presents is hereafter declared and appointed. And further, Wee will, and by their Presents, for Vs, our Heires and Successors, doe ordeyne and graunte, That the Governor of the saide Company for the tyme being, or in his Absence by Occasion of Sicknes or otherwise, the Deputie Governor for the tyme being, shall have Authoritie from tyme to tyme vpon all Occasions, to give order for the assembling of the saide Company, and calling them together to consult and advise of the Businesses and Affaires of the saide Company, and that the said Governor, Deputie Governor, and Assistants of the saide Company, for the tyme being, shall or maie once every Moneth, or oftener at their Pleasures, assemble and houlde and keepe a Courte or Assemblie of themselves, for the better ordering and directing of their Affaires, and that any seaven or more persons of the Assistants, together with the Governor, or Deputie Governor soe assembled, shalbe saide, taken, held, and reputed to be, and shalbe a full and sufficient Courte or Assemblie of the said Company, for the handling, ordering, and dispatching of all such Buysinnes and Occurrents as shall from tyme to tyme happen, touching or concerning the said Company or Plantacon; and that there shall or maie be held and kept by the Governor, or Deputie Governor of the said Company, and seaven or more of the said Assistants for the tyme being, vpon every last Wednesday in Hillary, Easter, Trinity, and Michas Termes respectivelie forever, one greate generall and solemne assemblie, which foure generall assemblies shalbe stiled and called the foure greate and generall Courts of the saide Company; In all and every, or any of which said greate and generall Courts soe assembled, Wee doe for Vs, our Heires and Successors, give and graunte to the said Governor and Company, and their Successors, That the Governor, or in his absence, the Deputie Governor of the saide Company for the tyme being, and such of the Assistants and Freemen of the saide Company as shalbe present, or the greater number of them so assembled, whereof the Governor or Deputie Governor and six of the Assistants at the least to be seaven, shall have full Power and authoritie to choose, nominate, and appointe, such and soe many others as they shall thinke fitt, and that shall be willing to accept the same, to be free of the said Company and Body, and them into

the same to admitt; and to elect and constitute such Officers as they shall thinke fitt and requisite, for the ordering, managing, and dispatching of the Affaires of the saide Govenor and Company, and their Successors; And to make Lawes and Ordinnces for the Good the Welfare of the saide Company, and for the Government and ordering of the saide Landes and Plantacons, and the People inhabiting and to inhabite the same, as to them from tyme to tyme shalbe thought meete, soe as such Lawes and Ordinances be not contrarie or repugnant to the Lawes and Statuts of this our Realme of England. And, our Will and Pleasure is, and Wee doe hereby for Vs, our Heires and Successors, establish and ordeyne, That yearely once in the yeare, for ever hereafter, namely, the last Wednesday in Easter Tearme, yearely, the Governor, Deputy-Governor, and Assistants of the saide Company and all other officers of the saide Company shalbe in the Generall Court or Assembly to be held for that Day or Tyme, newly chosen for the Yeare ensueing by such greater parte of the said Company, for the Tyme being, then and there present, as is aforesaide. And, yf it shall happen the present governor, Deputy Governor, and assistants, by theis presents appointed, or such as shall hereafter be newly chosen into their Roomes, or any of them, or any other of the officers to be appointed for the said Company, to dye, or to be removed from his or their severall Offices or Places before the saide generall Day of Eleccion (whome Wee doe hereby declare for any Misdemeanor or Defect to be removeable by the Governor, Deputie Governor, Assistants, and Company, or such greater Parte of them in any of the publique Courts to be assembled as is aforesaid) That then, and in every such Case, it shall and maie be lawful, to and for the Governor, Deputie Governor, Assistants, and Company aforesaide, or such greater Parte of them soe to be assembled as is aforesaide, in any of their Assemblies, to proceade to a new Eleccion of one or more others of their Company in the Roome or Place, Roomes or Places of such Officer or Officers soe dyeing or removed according to their Discrecons, And, ymedietely vpon and after such Eleccion and Elecons made of such Governor, Deputie Governor, Assistant or Assistants, or any other officer of the saide Company, in Manner and Forme aforesaid, the Authoritie, Office, and Power, before given to the former Governor, Deputie Governor, or other Officer and Officers soe removed, in whose Steade and Place newe shalbe soe chosen, shall as to him and them, and everie of them, cease and determine.

Provided alsoe, and our Will and Pleasure is, That aswell such as are by theis Presents appointed to be the present Governor, Deputie Governor, and Assistants of the said Company, as those that shall succeed them, and all other Officers to be appointed and chosen as aforesaid, shall, before they vndertake the Execucon of their saide Offices and Places respectivelie, take their Corporal Oathes for the due and faithful Performance of their Duties in their severall Offices and Places, before such Person or Persons as are by theis Presents herevnder appointed to take and receive the same; That is to saie, the saide Mathewe Cradock, whoe is hereby nominated and appointed the present Governor of the saide Company, shall take the saide Oathes before one or more of the Masters of our Courte of Chauncery for the Tyme being, vnto which Master or Masters of the Chauncery, Wee doe by theis Presents give full Power and Authoritie to take and administer the saide Oathe to the said Governor accordinglie: And after the saide Governor shalbe soe sworne, then the said Deputy Governor and Assistants, before by theis Presents nominated and appointed, shall take the said severall Oathes to their Offices and Places respectivelie belonging, before the said Mathew Cradock, the present Governor, soe formerlie sworne as aforesaide. And every such Person as shalbe at the Tyme of the annuall Eleccion, or otherwise, vpon Death or Removeall, be appointed to be the newe Governor of the said Company, shall take the Oathes to the Place belonging, before the Deputy Governor, or two of the Assistants of the said Company at the least, for the Tyme being: And the newe elected Deputie Governor and Assistants, and all other officers to be hereafter chosen as aforesaide from Tyme to Tyme, to take the Oathes to their places respectivelie belonging, before the Governor of said Company for the Tyme being, vnto which said Governor, Deputie Governor, and assistants, Wee doe by theis Presents give full Power and Authoritie to give and administer the said Oathes respectively, according to our true Meaning herein before declared, without any Comission or further Warrant to be had and obtyened of Vs, our Heires or Successors, in that Behalf. And, Wee doe further, of our especial Grace, certen Knowledge, and meere mocon, for Vs, our Heires and Successors, give and graunte to the said Governor and Company, and their Successors for ever by theis Presents, That it shalbe lawfull and

free for them and their Assignes, at all and every Tyme and Tymcs hereafter, out of any our Realmes or Domynions whatsoever, to take, leade, carry, and transport, for in and into their Voyages, and for and towardes the said Plantacon in Newe England, all such and soe many of our loving Subjects, or any other strangers that will become our loving Subjects, and live under our Allegiance, as shall willinglie accompany them in the same Voyages and Plantacon; and also Shipping, Armour, Weapons, Ordinance, Municon, Powder, Shott, Corne, Victualls, and all Manner of Clothing, Implements, Furniture, Beastes, Cattle, Horses, Mares, Marchandizes, and all other Things necessarie for the saide Plantacon, and for their Vse and Defence, and for Trade with the People there, and in passing and returning to and fro, any Lawe or Statute to the contrarie hereof in any wise notwithstanding; and without payeing or yeilding any Custome or Subsidie, either inward or outward, to Vs, our Heires or Successors, for the same, by the Space of seaven Yeares from the Day of the Date of theis Presents. Provided, that none of the saide Persons be such as shalbe hereafter by especiall Name restrayned by Vs, our Heires or Successors. And, for their further Encouragement, of our especial Grace and Favor, Wee doe by theis Presents, for Vs, our Heires and Successors, yeild and graunt to the saide Governor and Company, and their Successors, and every of them, their Factors and Assignes, That they and every of them shalbe free and quitt from all Taxes, Subsidies, and Customes, in Newe England, for the like Space of seaven Yeares, and from all Taxes and Imposicons for the Space of twenty and one Yeares, vpon all Goodes and Merchandizes at any Tyme or Tymcs hereafter, either vpon Importacon thither, or Exportacon from thence into our Realme of England, or into any other our Domynions by the said Governor and Company, and their Successors, their Deputies, Factors, and Assignes, or any of them; Except onlie the five Pounds per Centum due for Custome vpon all such Goodes and Merchandizes as after the saide seaven Yeares shalbe expired, shalbe brought or imported into our Realme of England, or any other of our Dominions, according to the auncient Trade of Merchants, which five Poundes per Centum onlie being payde, it shall be thenceforth lawfull and free for the said Adventurers, the same Goodes and Merchandizes to export and carry out of our said

Domynions into forraine Partes, without any Custome, Tax, or other Dutie to be paid to Vs, our Heires or Successors, or to any other Officers or Ministers of Vs, our Heires and Successors. Provided, that the said Goodes and Merchandizes be shipped out within thirteene Monethes, after their first Landing within any Parte of the saide Domynions. And, Wee doe for Vs, our Heires and Successors, give and graunte vnto the saide Governor and Company, and their Successors, That whensoever, or soe often as any Custome or Subsidie shall growe due or payeable vnto Vs, our Heires, or Successors, according to the Lymittacon and Appointment aforesaide, by Reason of any Goodes, Wares or Merchandizes to be shipped out, or any Retorne to be made of any Goodes, Wares, or Merchandize vnto or from the said Partes of Newe England hereby mencoed to be graunted as aforesaide, or any of the Landes or Territories aforesaid, That then, and soe often, and in such Case, the Farmers, Customers, and Officers of our Customes of England and Ireland, and everie of them for the Tyme being, vpon Request made to them by the saide Governor and Company, or their Successors, Factors, or Assignes, and vpon convenient Security to be given in that Behalf, shall give and allowe vnto the said Governor and Company, and their Successors, and to all and everie Person and Persons free of that Company, as aforesaide, six Monethes Tyme for the Payement of the one halfe of all such Custome and Subsidy as shalbe due and payeable unto Vs, our Heires and Successors, for the same; for which theis our Letters patents, or the Duplicate, or the inrollment thereof, shalbe vnto our saide Officers a sufficient Warrant and Discharge. Nevertheles, our Will and Pleasure is, That yf any of the saide Goodes, Wares, and Merchandize, which be, or shalbe at any Tyme hereafter landed or exported out of any of our Realmes aforesaide, and shalbe shipped with a Purpose not to be carried to the Partes of Newe England aforesaide, but to some other place, That then such Payment, Dutie, Custome, Imposicon, or Forfeiture, shalbe paid, or belonge to Vs, our Heires and Successors, for the said Goodes, Wares, and Merchandize, soe fraudulently sought to be transported, as yf this our Graunte had not been made or graunted. And, Wee doe further will, and by theis Presents, for Vs, our Heires, and Successors, firmlie enioine and comaunde, as well the Treasurer, Chauncellor and

Barons of the Exchequer, of Vs, our Heires and Successors, as also all and singular the Customers, Farmors, and Collectors of the Customes, Subsidies, and Imposts, and other the Officers and Ministers of Vs, our Heires and Successors whatsoever, for the Tyme Being, That they and every of them, vpon the shewing forth vnto them of theis Letters patents, or the Duplicate or exemplificacon of the same, without any other Writt or Warrant whatsoever from Vs, our Heires or Successors, to be obteyned or sued forth, doe and shall make full, whole, entire, and due Allowance, and cleare Discharge vnto the saide Governor and Company, and their Successors, of all Customes, Subsidies, Imposicons, Taxes and Duties whasoever, that shall or maie be claymed by Vs, our Heires and Successors, of or from the said Governor and Company, and their Successors, for or by Reason of the said Goodes, Chattels, Wares, Merchandizes, and Premises to be exported out of our saide Domyinions, or any of them, into any Parte of the saide Landes or Premises hereby mencoed, to be given, graunted, and confirmed, or for, or by Reason of any of the saide Goodes, Chattels, Wares, or Merchandizes to be imported from the said Landes and Premises hereby mencoed, to be given, graunted, and confirmed into any of our saide Dominions, or any Parte thereof as aforesaide, excepting onlie the saide five Poundes per Centum hereby reserved and payeable after the Expiracon of the saide Terme of seaven Yeares as aforesaid, and not before: And theis our Letters-patents, or the Inrollment, Duplicate, or Exemplificacon of the same shalbe for ever hereafter, from time to tyme, as well to the Treasurer, Chauncellor and Barons of the Exchequer of Vs, our Heires and Successors, as to all and singular the Customers, Farmors, and Collectors of the Customes, Subsidies, and Imposts of Vs, our Heires and Successors, and all Searchers, and other the Officers and Ministers whatsoever of Vs, our Heires and Successors, for the Time being, a sufficient Warrant and Discharge in this Behalf. And, further our Will and Pleasure is, and Wee doe hereby for Vs, our Heires and Successors, ordeyne and declare, and graunte to the saide Governor and Company, and their Successors, That all and every the Subiects of Vs, our Heires or Successors, which shall goe to and inhabite within the saide Landes and Premises hereby mencoed to be graunted, and every of their Children which shall happen to

be borne there, or on the Seas in going thither, or returning from thence, shall have and enjoy all liberties and Immunities of free and naturall Subjects within any of the Domyinions of Vs, our Heires or Successors, to all Intents, Construccons, and Purposes whatsoever, as yf they and everie of them were borne within the Realme of England. And that the Governor and Deputie Governor of the said Company for the Tyme being, or either of them, and any two or more of such of the saide Assistants as shalbe therevnto appointed by the saide Governor and Company at any of their Courts or Assemblies to be held as aforesaide, shall and maie at all Tymes, and from tyme to tyme hereafter, have full Power and Authoritie to minister and give the Oathe and Oathes of Supremacie and Allegiance, or either of them, to all and everie Person and Persons, which shall at any Tyme or Tymes hereafter goe or passe to the Landes and Premisses hereby mencoed to be graunted to inhabite in the same. And, Wee doe of our further Grace, certen Knowledg, and meere Mocon, give and graunte to the saide Governor and Company, and their Successors, That it shall and maie be lawfull, to and for the Governor or Deputie Governor, and such of the Assistants and Freemen of the said Company for the Tyme being as shalbe assembled in any of their generall Courts aforesaide, or in any other Courtes to be specially sumoned and assembled for that Purpose, or the greater Parte of them (whereof the Governor or Deputie Governor, and six of the Assistants to be alwaies seaven) from tyme to tyme, to make, ordeine, and establishe all Manner of wholesome and reasonable Orders, Lawes, Statutes, and Ordinnces, Direcons, and Instruccons, not contrarie to the Lawes of this our Realme of England, aswell for settling of the Formes and Ceremonies of Governm^t and Magistracy, fitt and necessary for the said Plantacon, and the Inhabitants there, and for nameing and stiling of all sorts of Officers, both superior and inferior, which they shall finde needeful for that Governement and Plantacon, and the distinguishing and setting forth of the severall duties, Powers, and Lymytts of every such Office and Place, and the Formes of such Oathes warrantable by the Lawes and Statutes of this our Realme of England, as shalbe respectivelie ministred vnto them for the Execucon of the said severall Offices and Places; as also, for the disposing and ordering of the Elecons of such of the said Officers as shalbe

annuall, and of such others as shalbe to succede in Case of Death or Removeall, and ministring the said Oathes to the newe elected Officers, and for Imposicons of lawfull Fynes, Mulcts, Imprisonment, or other lawfull Correcon, according to the Course of other Corporacons in this our Realme of England, and for the directing, ruling, and disposing of all other Matters and Things, whereby our said People, Inhabitants there, may be soe religiously, peaceable, and civilly governed, as their good Life and orderlie Conversacon, maie wynn and incite the Natives of Country, to the Knowledge and Obedience of the onlie true God and Sauior of Mankinde, and the Christian Fayth, which in our Royall Intencon, and the Adventurers free Profession, is the principall Ende of this Plantacion. Willing, comaunding, and requiring, and by theis Presents for Vs, our Heires, and Successors, ordeyning and appointing, that all such Orders, Lawes, Statuts and Ordinnces, Instrucons and Direcons, as shalbe soe made by the Governor, or Deputie Governor of the said Company, and such of the Assistants and Freemen as aforesaide, and published in Writing, vnder their comon Seale, shalbe carefullie and dylie observed, kept, performed, and putt in Execucon, according to the true Intent and Meaning of the same; and theis our Letters-patent, or the Duplicate or exemplificacon thereof, shalbe to all and everie such Officers, superior and inferior, from Tyme to Tyme, for the putting of the same Orders, Lawes, Statutes, and Ordinnces, Instrucons, and Direcons, in due Execucon against Vs, our Heires and Successors, a sufficient Warrant and Discharge. And Wee doe further, for Vs, our Heires and Successors, give and graunt to the said Governor and Company, and their Successors by theis Presents, that all and everie such Chiefe Comaunders, Captaines, Governors, and other Officers and Ministers, as by the said Orders, Lawes, Statuts, Ordinnces, Instrucons, or Direcons of the said Governor and Company for the Tyme being, shalbe from Tyme to Tyme hereafter imployed either in the Government of the saide Inhabitants and Plantacons, or in the Waye by Sea thither, or from thence, according to the Natures and Lymitts of their Offices and Places respectively, shall from Tyme to Tyme hereafter for ever, within the Precincts and Partes of Newe England hereby mencoed to be graunted and confirmed, or in the Waie by Sea thither, or from thence, have full and Absolute Power and Authoritie to

correct, punishe, pardon, governe, and rule all such the Subjects of Vs, our Heires and Successors, as shall from Tyme to Tyme adventure themselves in any Voyadge thither or from thence, or that shall at any Tyme hereafter, inhabite within the Precincts and Partes of New England aforasaide, according to the Orders, Lawes, Ordinnces, Instrucons, and Direcons aforesaid, not being repugnant to the Lawes and Statutes of our Realme of England as aforesaid. And Wee doe further, for Vs, our Heires and Successors, give and graunte to the said Governor and Company, and their Successors, by theis Presents; that it shall and maie be lawfull, to and for the Chiefe Comaunders, Governors, and Officers of the said Company for the Time being, who shalbe resident in the said Parte of Newe England in America, by theis Presents graunted, and others there inhabiting by their Appointment and Direcon, from Tyme to Tyme, and at all Tymes hereafter for their speciall Defence and Safety, to incounter, expulse, repell, and resist by Force of Armes, as well by Sea as by Lande, and by all fitting Waies and Meanes whatsoever, all such Person and Persons, as shall at any Tyme hereafter, attempt or enterprise the Destrucon, Invasion, Detriment, or Annoyance to the said Plantation or Inhabitants, and to take and surprise by all Waies and Meanes whatsoever, all and every such Person and Persons, with their Shippes, Armour, Municon, and other Goodes, as shall in hostile manner invade or attempt the defeating of the said Plantacon, or the Hurt of the said Company and Inhabitants: Nevertheless, our Will and Pleasure is, and Wee doe hereby declare to all Christian Kinges, Princes and States, that yf any Person or Persons which shall hereafter be of the said Company or Plantacon, or any other by Lycense or Appointment of the said Governor and Company for the Tyme being, shall at any Tyme or Tymes hereafter, robb or spoyle, by Sea or by Land, or doe any Hurt, Violence, or vnlawful Hostilitie to any of the Subjects of Vs, our Heires or Successors, or any of the Subjects of any Prince or State, being then in League and Amytie with Vs, our Heires and Successors, and that upon such iniury don and vpon iust Complaint of such Prince or State or their Subjects, Wee, our Heires and Successors shall make open Proclamation, within any of the Partes within our Realme of England, comodious for that purpose, that the Person or Persons having

comitted any such Roberie or Spoyle, shall within the Terme lymytted by such a Proclamacon, make full Restitucon or Satisfaccon of all such Iniureis don, soe as the said Princes or others soe complayning, maie hould themselves fullie satisfied and contented; and that yf the said Person or Persons, haveing comitted such Robbery or Spoile, shall not make, or cause to be made Satisfaccon accordinglie, within such Tyme soe to be lymytted, that then it shalbe lawful for Vs, our Heires and Successors, to putt the said Person or Persons out of our Allegiance and Protecccon, and that it shalbe lawfull and free for all Princes to prosecue with Hostilitie, the said Offendors, and every of them, their and every of their Procurers, Ayders, Abettors, and Comforters in that Behalf: Provided also, and our expresse Will and Pleasure is, And Wee doe by theis Presents for Vs, our Heires and Successors ordeyne and appoint That theis Presents shall not in any manner envre, or be taken to abridge, barr, or hinder any of our loving subiects whatsoever, to vse and exercise the Trade of Fishing vpon the Coast of New England in America, by theis Presents mencoed to be graunted. But that they, and every, or any of them, shall have full and free Power and Liberty to continue and vse their said Trade of Fishing vpon the said Coast, in any the Seas therevnto adjoyning, or any Armes of the Seas or Saltwater Rivers where they have byn wont to fishe, and to build and sett vp vpon the Landes by theis Presents graunted, such Wharfes, Stages, and Workehouses as shalbe necessarie for the salting, drying, keeping, and packing vp of their Fish, to be taken or gotten vpon that Coast; and to cutt down, and take such Trees and other Materialls there groweing, or being, or shalbe needeful for that Purpose, and for all other necessarie Easements, Helpes, and Advantage concerning their said Trade of Fishing there, in such Manner and Forme as they have byn heretofore at any tyme accustomed to doe, without making any wilfull Waste or Spoyle, any Thing in theis Presents conteyned to the contrarie notwithstanding. And Wee doe further, for Vs, our Heires and Successors, ordeyne and graunte to the said Governor and Company, and their Successors by theis Presents that theis our Letters-patents shalbe firme, good, effectual, and availeable in all Thinges, and to all Intents and Construcccons of Lawe, according to our true Meaning herein before declared, and shalbe construed, reputed, and

adiuged in all Cases most favourable on the Behalf, and for the Benefitt and Behoofe of the saide Governor and Company and their Successors: the saide Governor and Company and their Successors: Although expresse mencon of the true yearely Value or certainty of the Premisses or any of them, or of any other Guiftes or Grauntes, by Vs, or any of our Progenitors or Predecessors to the foresaid Governor or Company before this tyme made, in theis Presents is not made; or any Statute, Acte, Ordinnce, Provision, Proclamacon, or Restrainte to the contrarie thereof, heretofore had, made, published, ordeyned, or provided, or any other Matter, Cause, or Thing whatsoever to the contrarie thereof in any wise notwithstanding.

In Witnes whereof, Wee have caused theis our Letters to be made Patents.

Witnes ourself, at Westminster, the fourth day of March, in the fourth Yeaere of our Raigne.

Per Breve de Privato Sigillo,

WOLSELEY.

Appendix B

(From Ancient Charters and Laws of Massachusetts)

THE CHARTER
of the
PROVINCE OF THE MASSACHUSETTS BAY
in
NEW ENGLAND.
1691.

Recital that
King James
I. granted
to the
council at
Plymouth
in Devon,

All that
part of
America
from 40 to
48 degrees
Nor.
latitude.

William and Mary, by the grace of God, King and Queen of England, Scotland, France and Ireland, defenders of the faith, &c. To all to whom these presents shall come, greeting. Whereas his late majesty King James the first, our royal predecessor, by his letters patent under the great seal of England, bearing date at Westminster the third day of November, in the eighteenth year of his reign, did give and grant unto the council established at Plymouth in the county of Devon, for the planting, ruling, ordering and governing of New England in America, and to their successors and assigns, all that part of America lying and being in breadth from forty degrees of northerly latitude, from the equinoctial line to the forty-eighth degree of the said northerly latitude, inclusively, and in length of and within all the breadth aforesaid throughout all the main lands from sea to sea, together also with all the firm lands, soils, grounds, havens, ports, rivers, waters, fishings, mines and minerals, as well royal mines of gold and silver, as other mines and minerals, precious stones, quarries, and all and singular other commodities, jurisdictions, royalties, privileges, franchises and preeminences, both within the said tract of land upon the main, and also within the islands and seas adjoining, Provided always, that the

said lands, islands, or any the premises by the said letters patent intended or meant to be granted, were not then actually possessed or inhabited by any other christian prince or state, or within the bounds, limits or territories of the southern colony, then before granted by the said late king James the first, to be planted by divers of his subjects in the South parts: To have and to hold, possess and enjoy, all and singular the aforesaid continent lands, territories, islands, hereditaments, and precincts, seas, waters, fishings, with all and all manner of their commodities, royalties, liberties, preeminences and profits that should from thenceforth arise from thence, with all and singular their appurtenances, and every part and parcel thereof, unto the said council, and their successors and assigns for ever, to the sole and proper use and benefit of the said council, and their successors and assigns forever: To be holden of his said late majesty king James the first, his heirs and successors, as of his manor of East Greenwich in the county of Kent, in free and common soccage, and not in capite, or by knight's service: Yielding and paying therefor to the said late king, his heirs and successors, the fifth part of the ore of gold and silver, which should from time to time, and at all times then after happen to be found, gotten, had and obtained, in, at, or within any of the said lands, limits, territories or precincts, or in, or within any part or parcel thereof, for or in respect of all and all manner of duties, demands and services whatsoever, to be done, made or paid to the said late king James the first, his heirs and successors (as in and by the said letters patent, amongst sundry other clauses, powers, privileges and grants therein contained, more at large appeareth:) And whereas the said council established at Plymouth in the county of Devon, for the planting, ruling, ordering and governing of New England in America, did by their deed indented under their common seal, bearing date the nineteenth day of March, in the third year of the reign of our royal grandfather king Charles the first, of ever blessed memory, give, grant, bargain, sell, enfeoff, alien and confirm to Sir Henry Roswell, Sir John Young,

To hold in fee.

Paying the fifth part of the ore of gold and silver.

That the Council at Plymouth granted to Sir Henry Roswell and others.

Part of New
England by
certain
bounds.

Knights, Thomas Southcott, John Humphreys, John Endicott, and Simon Whetcombe, their heirs and assigns, and their associates for ever, all that part of New England in America aforesaid, which lies and extends between a great river there, commonly called Monomack alias Merimack, and a certain other river there called Charles river, being in a bottom of a certain bay there commonly called Massachusetts, alias Mattachusetts, alias Massatusetts bay, and also all and singular those lands and hereditaments whatsoever, lying within the space of three English miles on the south part of the said Charles river, or of any and every part thereof; and also all and singular the lands and hereditaments whatsoever, lying and being within the space of three English miles to the southward of the southernmost part of the said bay called Massachusetts, alias Mattachusetts, alias Massatusetts bay: and also all those lands and hereditaments whatsoever which lie and be within the space of three English miles to the northward of the said river called Monomack alias Merimack, or to the northward of any and every part thereof, and all lands and hereditaments whatsoever lying within the limits aforesaid North and South in latitude, and in breadth, and in length, and longitude, of and within all the breadth aforesaid throughout the main lands there, from the atlantic and western sea and ocean on the east part to the south sea on the west part, and all lands and grounds, place and places, soil, woods and wood grounds, havens, ports, rivers, waters, fishings and hereditaments whatsoever, lying within the said bounds and limits, and every part and parcel thereof; and also all islands lying in America aforesaid, in the said seas, or either of them on the western or eastern coasts or parts of the said tracts of land, by the said indenture mentioned to be given and granted, bargained, sold, enfeofed, aliened and confirmed, or any of them; and also all mines and minerals, as well royal mines of gold and silver, as other mines and minerals whatsoever in the said lands and premises, or any part thereof, and all jurisdictions, rights, royalties, liberties, freedoms, immunities, privileges, franchises,

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preeminences and commodities whatsoever, which they the said council established at Plymouth in the county of Devon, for the planting, ruling, ordering and governing of New England in America, then had, or might use, exercise or enjoy, in or within the said lands and premises, by the same indenture mentioned to be given, granted, bargained, sold, enfeoffed and confirmed, in or within any part or parcel thereof: To have and to hold the said part of New England in America, which lies and extends, and is abutted as aforesaid, and every part and parcel thereof; and all the said islands, rivers, ports, havens, waters, fishings, mines, minerals, jurisdictions, franchises, royalties, liberties, privileges, commodities, hereditaments and premises whatsoever, with the appurtenances, unto the said Sir Henry Roswell, Sir John Young, Thomas Southcott, John Humphreys, John Endicott, and Simon Whetcombe, their heirs and assigns and their associates for ever, to the only proper and absolute use and behoof of the said Sir Henry Roswell, Sir John Young, Thomas Southcott, John Humphreys, John Endicott, and Simon Whetcombe, their heirs and assigns and their associates for evermore: To be holden of our said royal grandfather king Charles the first, his heirs and successors, as of his manor of East Greenwich in the county of Kent, in free and common soccage, and not in capite nor by knight's service, yielding and paying therefor unto our said royal grandfather, his heirs and successors, the fifth part of the ore of gold and silver which should from time to time, and at all times hereafter happen to be found, gotten, had and obtained in any of the said lands within the said limits, or in or within any part thereof, for and in satisfaction of all manner of duties, demands and services whatsoever, to be done, made or paid to our said royal grandfather, his heirs or successors (as in and by the said recited indenture may more at large appear.) And whereas our said royal grandfather in and by his letters patent under the great seal of England, bearing date at Westminster the fourth day of March, in the fourth year of his reign, for the consideration therein mentioned, did grant and confirm

To hold in
fee.

paying, &c.

That king
James I. by
letters
patent
confirmed
to Sir
Henry
Roswell,
and others,

all those
lands before
granted to
them by
the Council
at
Plymouth.

unto the said Sir Henry Roswell, Sir John Young, Thomas Southcott, John Humphreys, John Endicott, and Simon Whetcombe, and to their associates after named, viz. Sir Richard Saltonstall, Knight, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon, and George Foxcroft, their heirs and assigns, all the said part of New England in America, lying and extending between the bounds and limits in the said indenture expressed, and all lands and grounds, place and places, soils, woods and wood grounds, havens, ports, rivers, waters, mines, minerals, jurisdictions, rights, royalties, liberties, freedoms, immunities, privileges, franchises, preeminences and hereditaments whatsoever; bargained, sold, enfeoffed and confirmed, or mentioned or intended to be given, granted, bargained, sold, enfeoffed, aliened and confirmed to them the said Sir Henry Roswell, Sir John Young, Thomas Southcott, John Humphreys, John Endicott, and Simon Whetcombe, their heirs and assigns, and to their associates for ever, by the said recited indenture: To have and to hold the said part of New England in America, and other the premises thereby mentioned to be granted and confirmed, and every part and parcel thereof, with the appurtenances, to the said Sir Henry Roswell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon, and George Foxcroft, their heirs and assigns for ever, to their only proper and absolute use and behoof for evermore: To be holden of our said royal grandfather, his heirs and successors, as of his manor of

East Greenwich aforesaid, in free and common soccage, and not in capite nor by knight's service; and also yielding and paying therefor to our said royal grandfather, his heirs and successors, the fifth part only of all the ore of gold and silver which from time to time and at all times after should be there gotten, had or obtained, for all services, exactions and demands whatsoever, according to the tenor and reservation in the said recited indenture expressed. And further our said royal grandfather by the said letters patent did give and grant unto the said Sir Henry Roswell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon, and George Foxcroft, their heirs and assigns, all that said part of New England in America, which lies and extends between a great river commonly called Monomack, alias Merimack river, and a certain other river there called Charles river, being in the bottom of a certain bay there commonly called Massachusetts, alias Mattachusetts, alias Massatusetts bay; and also all and singular those lands and hereditaments whatsoever, lying within the space of three English miles, on the south part of the said river called Charles river, or of any or every part thereof; and also all and singular the lands and hereditaments whatsoever, lying and being within the space of three English miles to the southward of the southernmost part of the said bay called Massachusetts, alias Mattachusetts, alias Massatusetts bay; and also all those lands and hereditaments whatsoever, which lie and be within the space of three English miles to the northward of the said river called Monomack alias Merimack, or to the northward of any and every part thereof, and all lands and hereditaments whatsoever lying within the limits aforesaid, north and south in latitude, and breadth, and in length and longitude, of and

by certain
bounds and
descriptions.

within all the breadth aforesaid throughout the main lands there, from the atlantic or western sea and ocean on the east part, to the south sea on the west part; and all lands and grounds, place and places, soils, woods and wood lands, havens, ports, rivers, waters and hereditaments whatsoever, lying within the said bounds and limits, and every part and parcel thereof; and also all islands in America aforesaid, in the said seas, or either of them on the western or eastern coasts or parts of the said tracts of lands, thereby mentioned to be given and granted, or any of them; and all mines and minerals, as well royal mines of gold and silver, as other mines and minerals whatsoever in the said lands and premises, or any part thereof; and free liberty of fishing in or within any of the rivers and waters within the bounds and limits aforesaid, and the seas thereunto adjoining; and of all fishes, royal fishes, whales, balene, sturgeon, and other fishes of what kind or nature soever, that should at any time thereafter be taken in or within the said seas or waters, or any of them, by the said Sir Henry Roswell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon, and George Foxcroft, their heirs or assigns or by any other person or persons whatsoever there inhabiting, by them or any of them to be appointed to fish therein. Provided always, that if the said lands, islands, or any the premises before mentioned, and by the said letters patent last mentioned, intended and meant to be granted, were at the time of granting of the said former letters patent, dated the third day of November, in the eighteenth year of the reign of his late majesty king James the first, actually possessed or inhabited by any other christian prince or state, or were within the bounds, limits or territories of the said southern colony then before granted by the said

Provided
they do not
intrench on
any former
possessions
or rights.

king, to be planted by divers of his loving subjects in the south parts of America, that then the said grant of our said royal grandfather should not extend to any such parts or parcels thereof so formerly inhabited, or lying within the bounds of the southern plantation as aforesaid. But as to those parts or parcels so possessed or inhabited by any such christian prince or state or being within the boundaries aforesaid, should be utterly void: To have and to hold, possess and enjoy the said parts of New England in America, which lie, extend, and are abutted as aforesaid, and every part and parcel thereof; and all the islands, rivers, ports, havens, waters, fishings, fishes, mines, minerals, jurisdictions, franchises, royalties, liberties, privileges, commodities, and premises whatsoever, with the appurtenances, unto the said Sir Henry Roswell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassal, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon, and George Foxcroft, their heirs and assigns for ever: To the only proper and absolute use and behoof of the said Sir Henry Roswell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon, and George Foxcroft, their heirs and assigns for evermore: To be holden of our said royal grandfather, and his heirs and successors, as of his manor of East Greenwich in the county of Kent, within the realm of England, in free and common soccage, and not in capite nor by Knight's service: And also yielding and paying therefor to our said royal grandfather, his heirs

To hold in
fee.

paying, &c.

And made
them a
body
politick.

Whereupon
they set-
tled a
colony and
it became
very
populous.

and successors, the fifth part only of all the ore of gold and silver which from time to time and at all times hereafter, should be gotten, had or obtained, for all services, exactions and demands whatsoever. Provided always, and his majesty's express will and meaning was, that only one fifth part of all the gold and silver ore above mentioned in the whole, and no more, should be answered, reserved or payable unto our said royal grandfather, his heirs and successors, by colour or virtue of the said last mentioned letters patent, the double reservations or recitals aforesaid, or any thing therein contained notwithstanding. And to the end that the affairs and business which from time to time should happen and arise concerning the said lands, and the plantations of the same, might be the better managed and ordered, and for the good government thereof, our said royal grandfather king Charles the first, did by his said letters patent create and make the said Sir Henry Roswell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon, and George Foxcroft, and all such others as should thereafter be admitted and made free of the company and society therein after mentioned, one body corporate and politick in fact and name, by the name of the Governor and company of the Massachusetts Bay in New England, and did grant unto them and their successors divers powers, liberties and privileges, as in and by the said letters patent may more fully and at large appear. And whereas the said governor and company of the Massachusetts Bay in New England, by virtue of the said letters patent did settle a colony of the English in the said parts of America, and divers good subjects of this kingdom, encouraged and invited by the said letters patent, did transport themselves and their effects into the same, whereby the said plantation did

become very populous, and divers counties, towns and places, were created, erected, made, set forth, or designed within the said parts of America, by the said governor and company for the time being: And whereas in the term of the Holy Trinity, in the thirty-sixth year of the reign of our dearest uncle King Charles the Second, a judgment was given in our court of Chancery then sitting at Winchester, upon a writ of scire facias, brought and prosecuted in the said court against the governor and company of the Massachusetts Bay in New England, that the said letters patent of our said royal grandfather King Charles the First, bearing date at Westminster the fourth day of March, in the fourth year of his reign, made and granted to the said governor and company of the Massachusetts Bay in New England, and the enrolment of the same, should be cancelled, vacated and annihilated, and should be brought into the said court to be cancelled, (as in and by the said judgment remaining upon record in the said court doth more at large appear:) And whereas several persons employed as agents in behalf of our said colony of the Massachusetts Bay in New England, have made their humble application unto us, that we would be graciously pleased by our royal charter to incorporate our subjects in our said colony, and to grant and confirm unto them such powers, privileges and franchises as in our royal wisdom, should be thought most conducing to our interest and service, and to the welfare and happy state of our subjects in New England: And we being graciously pleased to gratify our said subjects; and also to the end our good subjects within our colony of New Plymouth in New England aforesaid, may be brought under such a form of government, as may put them in a better condition of defence, and considering as well the granting unto them as unto our subjects in the said colony of the Massachusetts Bay our royal charter, with reasonable powers and privileges, will much tend not only to the safety, but to the flourishing estate of our subjects in the said parts of New England, and also to the advancing of the ends for which the said plantations were at first encouraged; of our special grace,

That in 1684 in the court of chancery a judgment was given that those letters patent should be cancelled vacated and annihilated, and should be brought into court to be cancelled.

The agents of that colony petitioned to be reincorporated.

K. William
and Q Mary
unite the
Massachu-
setts, New
Plymouth
and the
province of
Main and
Nova Scotia
&c. into
one real
province.

And grant
to the in-
habitants
all those
lands herein
bounded
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described.

certain knowledge, and mere motion, have willed and ordained, and we do by these presents for us, our heirs and successors will and ordain, that the territories and colonies commonly called or known by the names of the colony of the Massachusetts Bay, and colony of New Plymouth, the province of Main, the territory called Accada, or Nova Scotia; and all that tract of land lying between the said territories of Nova Scotia, and the said province of Main, be erected, united and incorporated: And we do by these presents unite, erect and incorporate the same into one real province by the name of our province of the Massachusetts Bay in New England; and of our especial grace, certain knowledge, and mere motion, we have given and granted, and by these presents, for us, our heirs and successors, do give and grant unto our good subjects, the inhabitants of our said province or territory of the Massachusetts Bay, and their successors, all that part of New England in America, lying and extending from the great river commonly called Monomack, alias Merimack, on the north part, and from three miles northward of the said river to the Atlantic or western sea or ocean on the south part, and all the lands and hereditaments whatsoever lying within the limits aforesaid, and extending as far as the outermost points or promontories of land called Cape Cod, and Cape Malabar north and south, and in latitude, breadth, and in length and longitude, of and within all the breadth and compass aforesaid throughout the main land there, from the said Atlantic or western sea, and ocean on the east part towards the south sea, or westward as far as our colonies of Rhode Island, Connecticut, and the Narragansett country: And also all that part and portion of main land, beginning at the entrance of Piscataway harbour, and so to pass up the same into the river of Newichwannock, and through the same into the furthest head thereof, and from thence northwestward, till one hundred and twenty miles be finished, and from Piscataway harbour mouth aforesaid north-eastward along the sea coast to Sagadehock, and from the period of one hundred and twenty miles aforesaid to cross over

land to the one hundred and twenty miles before reckoned up into the land from Piscataway harbour through Newichwannock river, and also the north half of the Isles of Shoals, together with the Isles of Capawock, and Nantuckett near Cape Cod aforesaid, and also the lands and hereditaments lying and being in the country or territory commonly called Accada, or Nova Scotia, and all those lands and hereditaments lying and extending between the said country or territory of Nova Scotia, and the said river of Sagadahock or any part thereof; and all lands, grounds, places, soils, woods and wood-grounds, havens, ports, rivers, waters, and other hereditaments and premises whatsoever, lying within the said bounds and limits aforesaid, and every part and parcel thereof: and also all islands and islets lying within ten leagues directly opposite to the main land within the said bounds: and all mines and minerals, as well royal mines of gold and silver, as other mines and minerals whatsoever in the said lands and premises, or any part thereof. To have and to hold the said territories, tracts, countries, lands, hereditaments, and all and singular other the premises, with their and every of their appurtenances to our said subjects the inhabitants of our said province of the Massachusetts Bay in New England, and their successors to their only proper use and behoof for evermore, to be holden of us, our heirs and successors, as of our manor of East Greenwich, in the county of Kent, by fealty only in free and common soccage: yielding and paying therefor yearly to us, our heirs and successors, the fifth part of all gold and silver ore, and precious stones which shall from time to time, and at all times hereafter, happen to be found, gotten had and obtained in any of the said lands and premises, or within any part thereof: Provided nevertheless, and we do for us, our heirs and successors grant and ordain, that all and every such lands, tenements and hereditaments, and all other estates, which any person or persons, or bodies politick or corporate, towns, villages, colleges or schools, do hold and enjoy, or ought to hold and enjoy, within the bounds aforesaid, by or under any grant or estate duly

To hold in
fee.

Paying, &c.

All lands,
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granted to

any town,
college, or
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confirmed.

A saving
for Samuel
Allen's
claim.

Grants or
convey-
ances not
prejudiced
for want
of form.

made or granted by any general court formerly held, or by virtue of the letters patent herein before recited, or by any other lawful right or title whatsoever, shall be by such person and persons, bodies politick and corporate, towns, villages, colleges, or schools, their respective heirs, successors and assigns for ever, hereafter held and enjoyed, according to the purport and intent of such respective grant, under and subject nevertheless to the rents and services thereby reserved or made payable, any matter or thing whatsoever to the contrary notwithstanding. And provided also, That nothing herein contained, shall extend, or be understood, or taken, to impeach or prejudice any right, title, interest or demand, which Samuel Allen of London, merchant, claiming from and under John Mason, Esq. deceased, or any other person or persons, hath or have, or claimeth to have, hold or enjoy, of, into, or out of any part or parts of the premises, situate within the limits above mentioned: but that the said Samuel Allen, and all and every such person and persons, may and shall have, hold and enjoy the same in such manner (and no other than) as if these presents had not been had or made. It being our further will and pleasure, That no grants or conveyances of any lands, tenements or hereditaments to any towns, colleges, schools of learning, or to any private person or persons, shall be judged or taken, to be avoided or prejudiced, for, or by reason of any want or defect of form, but that the same stand and remain in force, and be maintained, adjudged, and have effect, in the same manner as the same should or ought before the time of the said recited judgment, according to the laws and rules then and there usually practised and allowed.

Then follows the frame and powers of government (pp. 27-34). On page 34 there is the following proviso,

"Provided also, that it shall and may be lawful for the said governor and general assembly to make or pass any grant of lands lying within the bounds of the colonies formerly called the colonies of the Massachusetts Bay, and New Plymouth, and

province of Main, in such manner as heretofore they might have done by virtue of any former charter or letters patent; which grants of lands within the bounds aforesaid we do hereby will and ordain to be and continue for ever of full force and effect, without our further approbation or consent. And so as nevertheless, and it is our royal will and pleasure, that no grant or grants of any lands lying or extending from the river of Sagadahock to the gulf of St. Laurence and Canada rivers, and to the main sea northward and eastward, to be made or passed by the governor and general assembly of our said province, be of any force, validity or effect, until we, our heirs or successors, shall have signified our or their approbation of the same."

On p. 36 the admiralty jurisdiction is reserved to the Crown and on p. 37 to provide for the royal navy "all trees of the diameter of twenty-four inches and upwards of twelve inches from the ground. . . ." are reserved.

All these *reserved* rights were "relinquished" by the Crown by the Definitive Treaty of 1783.

Appendix C

Extracts from

Resolution of the Massachusetts Legislature of March 18, 1948

WHEREAS, By the Declaration of Independence, in July, seventeen hundred and seventy-six, Massachusetts and the several colonies asserted their character as "Free and Independent States"; and

WHEREAS, The Treaty of Peace with Great Britain in seventeen hundred and eighty-three acknowledged the Commonwealth of Massachusetts and the several States "to be free, sovereign and independent States" and relinquished "all claims to the Government, propriety, and territorial rights of the same, and every part thereof"

WHEREAS, By the Constitution of the United States, the several States reserved to the States their sovereignty and ownership to those lands within their boundaries; and

WHEREAS, Since the founding of the Republic, the several States have been uniformly recognized as the owners of coastal lands and lands covered by the marginal sea within their respective boundaries; and

WHEREAS, In its recent opinion in the case of United States

versus California the Supreme Court of the United States declared, . . . that the Federal Government had a paramount right to all of the resources, under California's marginal sea, without regard to or settling the question of ownership of the lands involved; and . . .

WHEREAS, The doctrine of the case of United States *versus* California, constitutes a direct threat to all ownership of minerals and other resources, public and private . . .

WHEREAS, The Attorney General of the United States has stated publicly before a joint hearing by a committee of the Congress that he intends to file suit against other littoral States; and

WHEREAS, The Commonwealth of Massachusetts is a littoral State and title to its shores and soils under the marginal sea is presently in danger of being taken from the Commonwealth; and

WHEREAS, There are now pending before the Congress of the United States, S. 1988* and similar bills, the purpose of which is to confirm in the several States title to these lands and resources in and beneath the navigable waters within State boundaries; and

WHEREAS, Such bills have the active support of forty-six Governors and forty-four Attorneys General, representatives of the several States; and . . .

RESOLVED, That the General Court of the Commonwealth of Massachusetts approves the action of its Governor and its Attorney General and their official representatives with regard to their support of S. 1988 in the joint hearings by the Senate and House Committees of the Congress; and be it further

RESOLVED, That the General Court of the Commonwealth of Massachusetts petitions the Congress to pass immediately S. 1988 or other suitable legislation to forever quiet the titles of the several states to submerged lands under the marginal sea and inland navigable waters within their respective boundaries and to all resources in and under said lands; and be it further

RESOLVED, That the General Court of the Commonwealth of Massachusetts petitions its Representatives and Senators in the Congress of the United States to vote for and actively participate in the enactment of S. 1988 or similar legislation; and be it further

RESOLVED, That copies of these resolutions be forthwith transmitted by the State Secretary to the President of the United States, to the presiding officer of each branch of Congress and to the members thereof from this Commonwealth.

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